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Federal Register

Wednesday
January 24, 1996

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

WASHINGTON, DC

[Two Sessions]

WHEN:	February 6, 1996 at 9:00 am and February 21, 1996 at 9:00 am
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

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Separate Parts In This Issue

Reader Aids

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

New Feature in the Reader Aids!

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

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.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 61, No. 16
Wednesday, January 24, 1996

DEPARTMENT OF AGRICULTURE

Economic Research Service

7 CFR Part 3700

Organization and Functions

AGENCY: Economic Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Economic Research Service (ERS) regarding agency organization and functions of major oeprational units. This amendment is necessary to reflect changes in the organization of ERS due to an internal reorganization.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: John Dunmore, Acting Administrator, ERS, U.S. Department of Agriculture, Room 1226, 1301 New York Avenue, NW., Washington, DC 20005–4788, (202) 219–0300.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act, 5 U.S.C. 552(a)(1), requires Federal agencies to publish in the Federal Register descriptions of its central and field organizations. ERS is the agency within the U.S. Department of Agriculture primarily responsible for providing economic and other social science information and analysis on agriculture, food, natural resources, and rural America. This amendment to 7 CFR part 3700 is necessary to reflect changes in the organization of ERS due to an internal reorganization. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 533, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., do not apply.

The following actions were taken: Section 3700.1 amended to revise the general description; § 3700.2 amended to revise the organizational structure; § 3700.3 amended to revise the functions; and § 3700.4 amended to update the authority to act for the administrator.

This rule supersedes the notice published on August 25, 1988, 53 FR 32369.

List of Subjects in 7 CFR Part 3700

Organization and functions.

Accordingly, 7 CFR part 3700 is revised to read as follows:

PART 3700—ORGANIZATION AND FUNCTIONS

Sec.

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.67.

§ 3700.1 General.

The Economic Research Service (ERS), originally established in 1961 under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), was reestablished as an agency of the U.S. Department of Agriculture of September 30, 1981 (46 FR 47747), in response to Secretary's Memorandum 1000–1 of June 17, 1981, entitled ''Reorganization of Department.'' The mission of ERS is to provide economic and other social science information and analysis for pubic and private decisions on agriculture, food, natural resources, and rural America. Its primary customers are USDA policy officials and program administrators, the Office of the While House, Congress, and environmental, consumer, and rural public interest groups, including farm groups and industry.

§ 3700.2 Organization.

ERS maintains its offices at 1301 New York Avenue, NW., Washington, DC 20005–4788. The organization consists of:

(a) The Administrator;
(b) Associate Administrator;
(c) Five Divisions; Commercial Agriculture Division, Food and Consumer Economics Division, Information Services Division, Natural Resources and Environment Division, and Rural Economy Division; and
(d) Office of Energy and New Uses.

§ 3700.3 Functions.

(a) *Administrator and Associate Administrator.* The Administrator and Associate Administrator are responsible for developing and implementing policies and plans in support of a program of economic and social science research, analysis, and data dissemination. General functions are: Conducting research and staff analysis, and developing short to long-term outlook analysis and economic indicators.

(b) *Director, Commercial Agriculture Division.* The Director, Commercial Agriculture Division, is responsible for conducting a program of economic research; economic intelligence gathering, analysis, and reporting; and data development and dissemination on economic conditions, U.S. and foreign policies, and agriculture production, trade, and marketing. General functions are:

(1) Developing and monitoring current intelligence and indicators on domestic and international agricultural markets and related farm and trade developments and short to long-term forecasts of domestic and world agricultural markets.

(2) Assessing the technological, economic, and institutional forces influencing U.S. and world agricultural markets.

(3) Conducting special analyses of U.S. and world agricultural markets for policy officials to assist in policy development and the operation of USDA programs.

(4) Collecting necessary information and performing international, national, and regional macroeconomics analysis to estimate the effects of macro economic trends and events in the global economy on the American farm sector.

(c) *Director, Food and Consumer Economic Division.* The Director, Food and Consumer Economic Division, is responsible for providing economic

research, monitoring and statistical indicators, and staff and the policy analysis of consumer and food marketing issues, including: Consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food security; market competition; vertical coordination; nutrition education and food assistance programs; and food safety regulation. General functions are:

(1) Analyzing consumer behavior and food choices, including research regarding the socio-demographic and economic determinants of food and nutrient consumption; consumer valuation of quality, safety, and nutrition characteristics; and the role of information in determining food choices.

(2) Examining food assistance and nutrition programs, nutritional adequacy of diets, and food security, including costs and benefits of food assistance and nutrition programs, program and policy alternatives, the extent and social cost of good insecurity, and the role of food assistance in meeting larger goals of welfare programs.

(3) Analyzing the food processing and distribution sector, including the ability of the sector to meet changing consumer demand; the effect of government market interventions to facilitate that response; and the effect of government interventions and rapid changes in the sector on consumer and producer welfare.

(4) Analyzing food safety issues, including consumer benefits from risk reduction, production tradeoffs in reducing hazards, impact of proposed regulations and international harmonization, and policy alternatives.

(5) Developing and monitoring indicators of individual, household, and market level food consumption, expenditures, and nutrients; food marketing costs, marketing margins, and farm-retail price spreads; and food safety hazards, their effects, and mitigation.

(d) *Director, Information Services Division.* The Director, Information Services Division, is responsible for managing and directing agencywide information technology, communications, and administrative activities in support of the economic research and analysis mission of ERS. General functions are:

(1) Developing and managing information technology infrastructure and training.

(2) Developing and managing communications, publication, and dissemination programs, policies, and procedures.

(3) Providing operations and management services, including liaison with the ARS's Administrative and Financial Management unit.

(e) *Director, Natural Resources and Environment Division.* The Director, Natural Resources and Environment Division, is responsible for providing economic research, monitoring and statistical indicators, and staff and policy analysis of agricultural resource and environment issues including the relationship between agriculture—its practices, technologies, policies, and resource use—and the environment, including effects on the sustainability of the natural resource base, preservation of species and genetic diversity, and environmental quality. General functions are:

(1) Developing and disseminating data for assessing the use of agricultural resources and technologies by agricultural producers. These data include use and ownership of land, use of agricultural chemicals and equipment, and water use.

(2) Evaluating the implications of alternative agricultural and resource conservation policies and programs on commodity prices, consumer welfare, competitiveness, and long-range maintenance of agricultural land and water resources.

(3) Analyzing the costs, benefits, and distributional impacts of alternative policies to reduce environmental and health risk externalities associated with agriculture.

(4) Monitoring and analyzing the uses and conditions of the nation's water resources and the economic consequences of agricultural and environmental policies affecting water supply, use, and quality.

(5) Analyzing the impacts of national and global developments and domestic and international policies on the use and value of land, water, capital assets, and other agricultural production decisions.

(6) Assessing the possible impacts of proposed or anticipated domestic policy and program changes on agricultural production decisions.

(7) Assessing the effects of technology on input use and markets and evaluating the factors affecting input productivity and technology adoption.

(8) Analyzing the implications of global environmental change and sustainable development for U.S. agriculture.

(f) *Director, Rural Economy Division.* The Director, Rural Economy Division, is responsible for conducting a program of economic and social science research and analysis on national rural and agricultural conditions and trends, and identifying and assessing the potential impact of public and private sector actions and policies that affect rural areas and the agricultural sector. General functions are:

(1) Analyzing and reporting on current economic and demographic issues facing rural areas and agricultural, especially how changes in the national and global economies affect rural areas and the agriculture sector.

(2) Determining the effects of economic, social, and governmental events and actions on the demand for and supply of rural local government services, the quality of such services, and the relationships between local services and the viability of rural communities.

(3) Developing and disseminating information on current trends in the non-metropolitan and farm populations, the number, location and characteristics of such people, and the factors associated with these trends.

(4) Developing estimates and analyzing labor force trends in rural labor markets, including analyses of unemployment and employment by industry and occupational groups, including farm labor.

(5) Developing data on the income situation of rural people and evaluating the effectiveness of alternative public policies and programs in improving incomes of rural people, especially people in disadvantaged groups.

(6) Monitoring information on and analyzing the development of rural portions of geographic regions of the United States, including changes in industry mix, impacts of energy costs, credit availability, and other economic activities.

(7) Analyzing and reporting on developments in rural and agricultural financial markets and in Federal tax laws, and their consequences for agriculture and rural economies.

(8) Collecting and disseminating financial information on farms and farm enterprises, and developing techniques necessary to measure and describe the financial condition of the agriculture sector and its components.

(g) *Director, Office of Energy and New Uses.* The Director, Office of Energy and New Uses, is responsible for assisting the Secretary in developing Departmental energy policy and coordinating Departmental energy programs and strategies. General functions are:

(1) Providing Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans;

(v) Preparing reports on energy and energy-related policies and programs required under Act of Congress and Executive Orders, including those involving testimony and reports on legislative proposals.

(2) Providing Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from departments and agencies of the Federal Government pursuant to interagency agreements.

(3) Representing the Under Secretary for Research, Education, and Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy, the Environmental Protection Agency, and other governmental departments and agencies.

(4) Providing the Under Secretary for Research, Education, and Economics with such assistance as requested to perform the duties delegated to him concerning energy and new uses.

(5) Working with the Office of Congressional Relations to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in Congress, appearances before Congressional committees, and related activities.

(6) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(7) Conduct a program of research on the economic feasibility of new uses of agricultural products. Assist agricultural researchers by evaluating the economic and market potential of new agricultural products and techniques in the initial phase of development and contributing to prioritization of the Departmental research agenda.

§ 3700.4 Authority to act for the Administrator.

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Director, Commercial Agriculture Division
Director, Food and Consumer Economics Division
Director, Natural Resources and Environment Division
Director, Rural Economy Division
Director, Information Services Division
Director, Office of Energy and New Uses

Done at Washington, DC, this 16th day of January 1996.

John Dunmore,

Acting Administrator, Economic Research Service.

[FR Doc. 96–900 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–18–M

DEPARTMENT OF THE TREASURY

Customs Service

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

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the Federal Register that adopted as a final rule, with some changes, interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act. The correction concerns a cross-reference citation within the final regulatory texts.

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

FOR FURTHER INFORMATION CONTACT: Joyce Metzger, Office of Field Operations (202–927–0792).

SUPPLEMENTARY INFORMATION:

Background

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

The changes to the interim NAFTA implementing regulations as reflected in the September 6, 1995, final regulations included a redesignation of paragraph (c) of § 181.76 as paragraph (d). However, in the first sentence of paragraph (e) of § 181.76 of the final regulations, the cross-reference to ''paragraph (c)'' was not correspondingly modified to read ''paragraph (d)''. This document corrects this oversight.

Correction of Publication

In the document published in the Federal Register as T.D. 95–68 on September 6, 1995 (60 FR 46334), on page 46379, in the first column, in § 181.76(e), the reference to ''paragraph (c)'' in the first sentence is corrected to read ''paragraph (d)''.

Dated: January 17, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–1047 Filed 1–23–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 95F–0172]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of disodium decanedioate as a corrosion/rust preventative for greases used as lubricants with incidental food contact. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 24, 1996; written objections and requests for a hearing by February 23, 1996.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 20, 1995 (60 FR 37453), FDA announced that a food additive petition

(FAP 5B4466) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of disodium decanedioate as a corrosion/rust preventative for greases used as lubricants with incidental food contact.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have the intended technical effect, and that the regulations in § 178.3570 should be amended as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before February 23, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

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

2. Section 178.3570 is amended in the table in paragraph (a)(3) by revising the entry for ''Disodium decanedioate'' under the heading ''Limitations'' to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitiations
* * * * * * *	
Disodium decanedioate (CAS Reg. No. 17265–14–4)	For use only: 1. As a corrosion inhibitor or rust preventative in mineral oil-bentonite lubricants at a level not to exceed 2 percent by weight of the grease. 2. As a corrosion inhibitor or rust preventative only in greases at a level not to exceed 2 percent by weight of the grease.
* * * * * * *	

* * * * *

Dated: January 3, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–942 Filed 1–23–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 95F–0171]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]-dioxaphosphepin-6-yl]oxy]-*N*,*N*-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphepin-6-yl]oxy]ethyl]ethanamine as a process stabilizer for high density olefin copolymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 24, 1996; written objections and requests for a hearing by February 23, 1996.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 12, 1995 (60 FR 35912), FDA announced that a food additive petition (FAP 5B4469) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]-dioxaphosphepin-6-yl]oxy]-*N*,*N*- bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo [d,f][1,3,2]dioxaphosphepin-6-yl]oxy]ethyl]ethanamine as a process stabilizer in high density olefin copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have the intended technical effect, and that the regulations in § 178.2010 should be amended as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before February 23, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

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

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
2-[[2,4,8,10-Tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]-dioxaphosphepin-6-yl]oxy]-*N*,*N*-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2]dioxaphosphepin-6-yl]oxy]ethyl]ethanamine (CAS Reg. No. 80410–33–9).	For use only: 1. At levels not to exceed 0.075 percent by weight of olefin copolymers complying with § 177.1520(c) of this chapter, item 3.1a or 3.2a (where the density of each of these polymers is not less than 0.94 gram per cubic centimeter), and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: January 5, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–972 Filed 1–23–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Planalquimica Industrial Ltda. The ANADA provides for use of nicarbazin and bacitracin methylene disalicylate in Type C broiler feed for the prevention of certain forms of coccidiosis and for

increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil, has filed ANADA 200–164, which provides for the use of single ingredient nicarbazin and bacitracin methylene disalicylate Type A articles to make combination drug Type C broiler feed containing 113.5 grams per ton (g/t) nicarbazin with 30 g/t bacitracin methylene disalicylate. The feed is used as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis and for increased rate of weight gain and improved feed efficiency in broiler chickens.

The ANADA is approved as a generic copy of Merck Research Laboratories' NADA 98–378, which was approved on March 15, 1995, and announced in the Federal Register of June 5, 1995 (60 FR 29483). ANADA 200–164 is approved as of January 24, 1996, and the regulations are amended in § 558.366 (21 CFR 558.366) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Additionally, § 558.366(a) is revised to clarify that the listed sponsors are only approved for those uses of the 25 percent nicarbazin Type A medicated article in the table accompanied by their drug labeler code in the ''Sponsor'' column. Consistent with this, the code for Planalquimica is being added to the ''Sponsor'' column because it was inadvertently omitted when the firm's approval for use of nicarbazin alone in chicken feed was announced in the Federal Register of June 28, 1995 (60 FR 33342).

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

ANADA 200–164 provides for use of nicarbazin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds. Nicarbazin is a Category II drug which, as provided in 21 CFR 558.4, requires an approved Form FDA 1900 for making Type C medicated feeds. Therefore, use of nicarbazin Type A medicated articles in making Type C medicated feeds as in this ANADA requires an approved Form FDA 1900.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.366 is amended by revising paragraph (a), and in the table in paragraph (c) under the ''Sponsor'' column in the entry for ''113.5 (0.0125 pct)'' by numerically adding ''060728'', and in the same column in the item ''Bacitracin methylene disalicylate 30'' by numerically adding ''060728'' to read as follows:

§ 558.366 Nicarbazin.

(a) Type A medicated articles: 25 percent to 000006, 000986, and 060728 in § 510.600(c) of this chapter for use as indicated in the table in paragraph (c) of this section.

* * * * *

Dated: December 28, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–941 Filed 1–23–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 40 and 41

[Public Notice 2312]

Visas: Regulations Pertaining to Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: On March 4, 1995, the President, as part of the Administration's regulatory reinvention initiative, directed all heads of departments and agencies, *inter alia*, to conduct a page-by-page review of all regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' (Memorandum for Heads of Departments and Agencies, Regulatory Reinvention Initiative, March 4, 1995.) In response, the Visa Office of the Department of State has undertaken a review of its visa regulations to determine whether they may be eliminated, shortened, or rewritten in a more understandable fashion.

EFFECTIVE DATES: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The President has directed each agency to undertake a review of its regulations for the purpose of reducing the regulations or, when possible, rendering them more readable and comprehensible. The Visa Office of the Department of State has engaged in a thorough line-by-line review of all visa related regulations in parts 40 through 45 and part 47 of Title 22 of the Code of Federal Regulations. As a result, the Visa Office is proposing various amendments to the regulations consistent with the President's directive. The Visa Office is also using this opportunity to make other necessary changes to the regulations. The Visa Office will be publishing the proposed changes in a series of publications.

Editing

This rule makes editorial changes to two sections in 22 CFR Part 40 and to five sections in Part 41.

Part 40 Amendments

The amendment to § 40.62 changes the section by incorporating the statutory period of time one must

remain outside the U.S. following deportation by specific reference to the statute rather than by repeating the statutory language which the regulation currently does.

The amendment to § 40.93 will ensure that it accurately reflects INA 212(a)(9)(C) as amended by sec. 307 of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102–232) Dec. 12, 1991.

Part 41 Amendments

This rule amends §§ 41.53, 41.54, 41.55, 41.56 and 41.57, relating to H, L, O, P, and Q visas. As these business visa classifications require the approval of a petition by the Immigration and Naturalization Service, the Department's regulatory structure at 22 CFR part 41 is similar for each of these classifications. The amendments shorten each regulation by making reference to official evidence of approval of status by the INS rather than identifying specific types of evidence, such as petitions, approval notices, etc., which reflect approval status.

Final Rule

Because the changes to 22 CFR made by this rule are editorial and non substantive, it has, been determined that notice and public comment are unnecessary. This rule, therefore, meets the good cause exception under 5 U.S.C. 553(b)(B) and is being published as a final rule.

This rule is not considered to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record keeping requirements on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. It is exempt from E.O. 12866 but has been reviewed and found to be consistent therewith.

List of Subjects in 22 CFR Parts 40 and 41

Aliens, Nonimmigrants, Immigrants, Ineligibilities, Visas and passports.

Proposed Regulations

In view of the foregoing, title 22 of the Code of Federal Regulations subchapter E—parts 40, and 41 are amended to read as follows.

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read:

Authority: 8 U.S.C. 1104.

2. Part 40 is amended by revising § 40.62 to read as follows:

§ 40.62 Certain aliens arrested and deported.

An alien who was arrested and deported from the United States under INA 212(a)(6)(B) shall not be issued a visa unless the alien has complied with the time limitations therein or has obtained permission from the Immigration and Naturalization Service to reapply for admission to the United States.

3. Section 40.93 is revised to read as follows:

§ 40.93 International child abduction.

An alien who would otherwise be ineligible under INA 212(a)(9)(C)(i) shall not be ineligible under such paragraph if the U.S. citizen child in question is physically located in a foreign state which is party to the Hague Convention on the Civil Aspects of International Child Abduction.

PART 41—[AMENDED]

4. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

5. Part 41 is revised by amending paragraph (a) of § 41.53 to read as follows:

§ 41.53 Temporary Workers and Trainees.

(a) *Requirements for H classification.* An alien shall be classifiable under INA 101(a)(15)(H) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized entry in such classification; or

(3) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

* * * * *

6. Section 41.54 is amended by revising paragraph (a) to read as follows:

§ 41.54 Intracompany transferees (executives, managers, and specialists).

(a) *Requirements for L classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(L) if:

(1) The consular officer is satisfied that the alien qualifies under that section; and either

(2) In the case of an individual petition, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

(3) In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by INS of a blanket petition

(i) listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L) or

(ii) to accord such classification to qualified aliens who are being transferred to qualifying positions identified in such blanket petition; or

(4) The consular officer is satisfied the alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

* * * * *

7. Section 41.55 is amended by revising paragraph (a) introductory text, (a)(1) and (2) to read as follows:

§ 41.55 Aliens with extraordinary ability.

(a) Requirements for O classification. An alien shall be classifiable under the provisions of INA 101(a)(15)(O) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

* * * * *

8. Section 41.56 is amended by revising paragraph (a) introductory text, (a) (1) and (2) to read as follows:

§ 41.56 Athletes, artists, and entertainers.

(a) *Requirements for P classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(P) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and either

(2) With respect to the principal alien, the consular officer has received official evidence of the approval by INS of a petition to accord such classification or of the extension by INS of the period of authorized stay in such classification; or

* * * * *

9. Section 41.57 is amended by revising paragraph (a)(2) and paragraph (c) to read as follows, and by deleting paragraph (a)(3).

§ 41.57 International cultural exchange visitors.

(a) * * *

(2) The consular officer has received official evidence of the approval by INS of a petition or the extension by INS of

the period of authorized stay in such classification.

* * * * *

(b) * * *

(c) *Validity of Visa.* The period of validity of a visa issued on the basis of paragraph (a) of this section must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

Dated: December 14, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–1011 Filed 1–23–96; 8:45 am]

BILLING CODE 4710–06–P

22 CFR Parts 40, 41, 42, 43, 44, 45, and 47

[Public Notice 2311]

Visas: Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: On March 4, 1995, the President, as part of the Administration's regulatory reinvention initiative, directed all heads of departments and agencies, *inter alia,* to conduct a page-by-page review of all regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' (Memorandum for Heads of Departments and Agencies, Regulatory Reinvention Initiative, March 4, 1995.) In response, the Visa Office of the Department of State has undertaken a review of its visa regulations to determine whether they may be eliminated, shortened, or rewritten in a more understandable fashion. This final rule reflects the first publication of changes to 22 CFR, Chapter I being made as a result of this review.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The President has directed each agency to undertake a review of its regulations for the purpose of reducing the regulations or, when possible, rendering them more readable and comprehensible. The Visa Office of the Department of State has engaged in a thorough line-by-line review of all visa related regulations in parts 40 through 45 and part 47 of Title 22 of the Code of Federal Regulations. As a result, the Visa Office is proposing various amendments to the regulations consistent with the President's directive. The Visa Office is also using this opportunity to make other necessary changes to the regulations. The Visa Office will be publishing the proposed changes in a series of separate publications.

Updating

Several regulations were originally crafted to address time-limited circumstances under the law. With the passage of time or as the result of the enactment of technical corrections, these provisions have become moot. Consequently, pertinent amendments are made to the following sections:

Part 40: §§ 40.1(h), 40.1(m), 40.51(a) and (c) and 40.52.

Part 41: §§ 41.11(a) and (b); 41.12; and 41.42(b)(1).

Part 42: §§ 42.31(c); 42.52(a); 42.54; 42.55(a); and 42.74(b).

This rule also repeals Parts 43; 44 and 47.

S Visa

This rule assigns visa symbols to the visa classifications created by the provisions of section 130003 of Pub. L. 103–322 which concerns aliens who supply to the U.S. critical information relating to terrorism and criminal organizations or enterprises. This rule revises section 41.12 to reflect the existence of these new nonimmigrant classifications and to provide the appropriate visa symbols.

Terminated Programs

The Immigration Reform and Control Act of 1986 (Pub. L. 99–603), the Immigration Amendments Act of 1988 (Pub. L. 100–658), and the Immigration Act of 1990 (Pub. L. 101–649) created several temporary immigrant classifications. The following parts are being repealed by this rule since these programs have terminated with the passage of time: Part 43 which implemented the FY 1987–FY 1988 Nonpreference Program under sec. 314 of Pub. L. 99–603 (commonly known as the NP–5 Program), and its successor, the FY 1992–1994 Diversity Transitional Visa Program under sec. 132 of Pub. L. 101–649 (commonly known as the AA–1 Program); Part 44 which implemented the FY 1990–1991 Immigrant Program under sec. 3 of Pub. L. 100–658 (commonly known as the OP–1 program); and Part 47 which implemented the FY 1991–1993 Transitional Program for Displaced Tibetans, sec. 134 of Pub. L. 101–649.

Transitional Visas for Legalized Aliens

Sec. 112 of the Immigration Act of 1990 (Pub. L. 101–649) provided transitional immigrant visa numbers for legalized aliens in FY 1992–1994. As this provision lapsed, the following sections are amended to remove any reference to the transitional provisions: §§ 42.31(c) 42.52(a), 42.54, 42.55(a) and 42.74(b).

Miscellaneous Provisions

Several other sections of 22 CFR have been amended to reflect changes in the law. Sec. 40.1(h) is amended to accord immigrant visa status under INA 203(b), the Diversity Program. It is also edited for clarity. As the Immigration Act of 1990 (Pub. L. 101–649) imposed different effective dates for various subtitles of the Act, both § 40.1(m) and § 40.51(a) and (c) were written to conform with those variances in effective dates. They are now edited to remove any reference to such dates. Lastly, § 41.41(b)(1) has been amended to remove the reference to the obsolete Form I–551.

Typographical Corrections

Previous issues of the Federal Register contained typographical errors which are being corrected in this rule. On page 21211 in the issue of May 7, 1991, in the third column under paragraph (b) of the regulation at § 40.63(b), ''hereunder'' should have read ''thereunder.'' In the same publication on page 21212 in the second column under paragraph (a)(5) of the regulation at § 40.101, ''therefore'' should have read ''therefor.'' In the July 2, 1991 issue, on page 30428 in the first column under § 41.1, the reference to ''INA 212(a)(i)(I)'' in the introductory paragraph should have read ''INA 212(a)(7)(B)(i)(I), (i)(II),''and under § 41.1(a) there should have been a comma following the words ''permanent residence.'' Finally in the first column of the July 17, 1991 issue, on page 32507 under § 45.5(e), the word ''position'' in the fourth line should have read ''petition.''

The 1995 edition of 22 CFR contains the following typographical errors: in § 41.3(d) the word ''consulat'' should be ''consular''; in § 42.63(a)(2) the word ''custory'' should read ''custody''; in § 42.72(e) the parentheses around the ''(Pub. L. 101–649)'' should be removed; and in § 42.82(g)(1) the ''e'' should be removed from the word ''therefore''. On page 42611 in the November 5, 1987 issue in the third column under § 41.113, the citation ''INA 101(a)(3)'' should read ''INA 101(a)(30).'' This rule

also makes the corrections to these typographical errors.

Final Rule

Because this rule contains no substantive changes to 22 CFR, it has been determined that notice and public comment are unnecessary. This rule, therefore, meets the good cause exception under 5(b)(B) and is being published as a final rule.

This rule is not considered to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record keeping requirements on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act.

This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. It is exempt from E.O. 12866 but has been reviewed and found to be consistent therewith.

List of Subjects in 22 CFR Parts 40, 41, 42, 43, 44, and 47

Aliens, Nonimmigrants, Immigrants, Visas and passports.

Final Regulations

In view of the foregoing, under the authority at 8 U.S.C. 1104, title 22 of the Code of Federal Regulations subchapter E—parts 40, 41, and 42 are amended to read as follows and, under the authority of sections 132, 133, and 134 of Pub. L. 101–649, 104 Stats. 5000 and 5001, parts 43, 44, and 47 are removed and reserved.

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read:

Authority: 8 U.S.C. 1104.

§ 40.9 [Removed and reserved]

2. Part 40 is amended by removing and reserving section 40.9 of subpart A—General Provisions of subchapter E—VISAS.

3. In § 40.1 paragraphs (h)(2) and (3), and (m) are revised and paragraph (h)(4) is added to read as follows:

§ 40.1 Definitions.

* * * * *

(h) * * *

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27) (A) or (B);

(3) Has been selected by the annual selection system to apply under INA 203(c); or

(4) Is an alien described in § 40.51(c).

* * * * *

(m) *Not subject to numerical limitation* means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b)(2)(i), or as a special immigrant within the meaning of INA 101(a)(27) (A) and (B), unless specifically subject to a limitation other than under INA 201(a), (b), or (c).

4. Section 40.51 is amended by revising paragraphs (a) and (c) to read as follows:

§ 40.51 Labor certification.

(a) *INA 212(a)(5) applicable only to certain immigrant aliens.* INA 212(a)(5)(A) applies only to immigrant aliens described in INA 203(b)(2) or (3) who are seeking to enter the United States for the purpose of engaging in gainful employment.

* * * * *

(c) *Labor certification not required in certain cases.* A spouse or child accompanying or following to join an alien spouse or parent who is a beneficiary of a petition approved pursuant to INA 203(b)(2) or (3) is not considered to be within the purview of INA 212(a)(5).

5. Section 40.52 is revised to read as follows:

§ 40.52 Unqualified physicians.

INA 212(a)(5)(B) applies only to immigrant aliens described in INA 203(a) (2) or (3).

6. Section 40.63 is amended by revising paragraph (b) to read as follows:

§ 40.63 Misrepresentation

* * * * *

(b) *Misrepresentation in application under Displaced Persons Act or Refugee Relief Act.* Subject to the conditions stated in INA 212(a)(6)(c)(i), an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder , shall be considered ineligible under the provisions of INA 212(a)(6)(C).

* * * * *

7. Section 40.101 is amended by revising paragraph (a)(5) to read as follows:

§ 40.101 Failure of application to comply with INA.

(a) *Refusal under INA 221(g).* The consular officer shall refuse an alien's visa application under INA 221(g)(2) as failing to comply with the provisions of INA or the implementing regulations if:

(1) * * *

(5) The necessary fee is not paid for the issuance of the visa or, in the case of an immigrant visa, for the application therefor;

(6) * * *

PART 41—[AMENDED]

8. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

9. Section 41.1 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 41.1 Exemption by law or treaty from passport and visa requirements.

Nonimmigrants in the following categories are exempt from the passport and visa requirements of INA 212(a)(7)(B)(i)(I), (i)(II):

(a) *Alien members of the U.S. Armed Forces.* An alien member of the U.S. Armed Forces in uniform or bearing proper military identification, who has not been lawfully admitted for permanent residence, coming to the United States under official orders or permit of such Armed Forces (Sec. 284, 86 Stat. 232; 8 U.S.C. 1354).

* * * * *

10. Section 41.3 is amended by revising paragraph (d) to read as follows:

§ 41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.

* * * * *

(d) *Emergent circumstances; visa waiver.* An alien well and favorably known at the consular office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

* * * * *

11. Section 41.11(a) and (b)(1) are revised to read as follows:

§ 41.11 Entitlement to nonimmigrant status.

(a) *Presumption of immigrant status and burden of proof.* An applicant for a nonimmigrant visa, other than an alien applying for a visa under INA 101(a)(15)(H)(i) or (L), shall be presumed to be an immigrant until the consular officer is satisfied that the alien is entitled to a nonimmigrant status described in INA 101(a)(15) or otherwise established by law or treaty. The burden of proof is upon the applicant to establish entitlement for nonimmigrant status and the type of nonimmigrant visa for which application is made.

(b) *Aliens unable to establish nonimmigrant status.* (1) A nonimmigrant visa shall not be issued to an alien who has failed to overcome the presumption of immigrant status established by INA 214(b).

* * * * *

12. In section 41.12 the table removing the entries for ''S–1 and S–2'' and adding new entries for ''S–7 and S–8'' to read as follows:

§ 41.12 Classification symbols.

* * * * *

Symbol class	Section of law
* * * *	
S–7 Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise.	101(a)(15)(S)(i).
S–8 Certain Aliens Supplying Critical Information Relating to Terrorism.	101(a)(15)(S)(ii).

* * * * *

13. Section 41.42 is amended by revising paragraph (b)(1) to read as follows:

§ 41.42 Crew-list visas.

* * * * *

(b) *Application.* (1) A list of all alien crewmen serving on a vessel or aircraft proceeding to the United States and not in possession of a valid individual D visa or INS Form I–151, Alien Registration Receipt Card, shall be submitted in duplicate to a consular officer on INS Form I–418, Passenger List—Crew List, or other prescribed forms. The duplicate copy of Form I–418 must show in column (4) the date, city, and country of birth of each person listed and in column (5) the place of issuance and the issuing authority of the passport held by that person. For aircraft crewmen, the manifest issued by the International Civil Aviation Organization (ICAO) or Customs Form 7507, General Declaration, may be used in lieu of Form I–418 if there is adequate space for the list of names.

* * * * *

14. Section 41.113 is amended by revising paragraph (k)(2) introductory text to read as follows:

§ 41.113 Procedures in issuing visas.

* * * * *

(k) * * *

(2) Is the holder of an official identity card which has been issued for participation in such Games under the Olympic Rules Bylaws, which includes the signature of a competent authority of the participating government and the assurance of that government's recognition of the card for re-entry by the bearer for an additional period of six months beyond the expiration date of the card, and which otherwise meets the requirements of sections 101(a)(30) and 212(a)(7)(B)(i)(I) of the Immigration and Nationality Act, a stamp consisting of:

* * * * *

PART 42—[AMENDED]

15. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104.

§ 42.31 Family-sponsored immigrants.

16. Section 42.31 is amended by removing paragraph (c).

17. Section 42.52 is amended by revising paragraph (a) to read as follows:

§ 42.52 Post records of visa applications.

(a) *Waiting list.* Records of individual visa applicants entitled to an immigrant classification and their priority dates shall be maintained at posts at which immigrant visas are issued. These records shall indicate the chronological and preferential order in which consideration may be given to immigrant visa applications within the several immigrant classifications subject to the numerical limitations specified in INA 201, 202, and 203. Similar records shall be kept for the classes specified in INA 201(b)(2) and 101(a)(27) (A) and (B) which are not subject to numerical limitations. The records which pertain to applicants subject to numerical limitations constitute ''waiting lists'' within the meaning of INA 203(e)(3) as redesignated by the Immigration Act of 1990.

* * * * *

§ 42.54 Order of consideration.

18. Section 42.54 is amended by removing paragraph (b).

19. Section 42.55 is amended by revising paragraph (a) to read as follows:

§ 42.55 Reports on numbers and priority dates of applications on record.

(a) Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in INA 201, 202, and 203 whose immigrant visa applications have been recorded in accordance with § 42.52(c)

* * * * *

20. Section 42.63 is amended by revising paragraph (a)(2) to read as follows:

§ 42.63 Application forms and other documentation.

(a) * * *

(2) *Application of alien under 14 or physically incapable.* The application on Form OF–230 for an alien under 14 years of age or one physically incapable of completing an application may be executed by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, the alien.

* * * * *

21. Section 42.72 is amended by revising paragraph (e) introductory text to read as follows:

§ 42.72 Validity of visas.

* * * * *

(e) *Aliens entitled to the benefits of section 154(a) and (b) of Pub. L. 101–649.*

* * * * *

22. Section 42.74 is amended by revising paragraph (b) to read as follows:

§ 42.74 Issuance of new or replacement visas.

* * * * *

(b) *Replacement immigrant visa for an alien subject to numerical limitation.* An immigrant documented under INA 203(a), (b), or (c) or under section 124 of the Immigration Act of 1990, who was or will be unable to use the visa during the period of its validity because of reasons beyond the alien's control and for which the alien is not responsible, may be issued a replacement immigrant visa under the original number during the same fiscal year in which the original visa was issued (provided the number has not been returned to the Department), if the consular officer then finds the alien qualified. The alien must pay anew the statutory application and issuance fees. Prior to issuing a replacement immigrant visa at a consular office other than the one that issued the original visa, the consular officer must also ascertain whether the original issuing office knows of any reason why a replacement visa should not be issued. In issuing a visa under this paragraph, the consular officer shall insert the word ''REPLACE'' on Form OF–155A, Immigrant Visa and Alien Registration, before the word ''IMMIGRANT'' in the title of the visa.

* * * * *

23. Part 43, 44 and 47 are removed and reserved.

PART 43—[REMOVED AND RESERVED]

PART 44—[REMOVED AND RESERVED]

PART 47—[REMOVED AND RESERVED]

PART 45—[AMENDED]

24. The authority citation for part 45 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1153.

25. Section 45.5 is amended by revising paragraph (e) to read as follows:

PART 45 VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 124 OF PUBLIC LAW 101–649.

§ 45.5 Redetermination of admissibility if visa validity extended.

* * * * *

(e) For the purposes of this section, ''qualifying position'' shall include both the position occupied by the alien at the time the petition in the alien's behalf was approved and any other position within the petitioning entity's organization, regardless of geographical location, which would otherwise meet the requirements for approval of such a petition in the alien's behalf. For the purposes of this section, *qualifying employment* shall mean any position in the United States of the kind required for approval of such a petition.

Dated: December 15, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–1012 Filed 1–23–96; 8:45 am]

BILLING CODE 4710–06–P

22 CFR Part 41

[Public Notice 2403]

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

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim final rule, with request for comments.

SUMMARY: The Violent Crime Control and Law Enforcement Act of 1994 created a new nonimmigrant visa classification by adding section 101(a)(15)(S) to the Immigration and Nationality Act. These regulatory amendments establish standards for the issuance of nonimmigrant visas under this classification.

DATES: Effective January 24, 1996. Written comments are invited and must be received on or before March 25, 1996.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20522–0113, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, was signed by the President on September 13, 1994. Section 130003 of the Act amended the Immigration and Nationality Act by adding section 101(a)(15)(S), a new nonimmigrant visa classification. This visa classification provides for the admission into the United States of certain alien witnesses and informants.

The first of two paragraphs of the new section 101(a)(15)(S) provides for the admission of aliens determined by the Attorney General to possess critical reliable information concerning a criminal organization or enterprise. The alien must be willing to provide that information to federal and/or state authorities, and the Attorney General must determine that his/her presence is essential to the success of an authorized criminal investigation or prosecution. Pursuant to a new section 214(j)(i) of the INA also added by section 13003, no more than 100 visas are available in this category per fiscal year.

The second paragraph of 101(a)(15)(S) provides for nonimmigrant visas for aliens whom the Secretary of State and the Attorney General jointly determine possess critical reliable information about a terrorist organization, enterprise or operation, and who are willing to provide or have provided such information to federal law enforcement authorities, or a federal court, and who will be or have been placed in danger as the result of providing such information. They must also be eligible for an award under section 36(a) of the State Department's Basic Authorities Act of 1956. Pursuant to the new section 214(j)(i) of the INA referred to above, no more than 25 visas are available in this category per fiscal year.

The spouse, married and unmarried sons and daughters, and parents of aliens classified under subsection (S)(i) or (S)(ii) may be granted derivative status, if the Attorney General (or in the case of (S)(ii), the Secretary of State and the Attorney General jointly) consider it appropriate.

The enactment of this section provides a new mechanism to admit aliens into the U.S. as witnesses and informants. Under past law the only means to admit such aliens were either in the B visa category or under parole.

This visa classification requires the Attorney General in the case of the first subsection and the Attorney General and the Secretary of State in the case of the second subsection to determine that all the statutory requirements are met prior to visa issuance. The Immigration and Naturalization Service (INS) has promulgated extensive regulations [60 FR 44260] on this classification, explaining how the law enforcement agencies interact with the Attorney General in order to meet the applicable legal requirements.

Under subsection (ii) of the S classification, the Secretary of State and the Attorney General act jointly in determining the alien's entitlement to classification. The initial stages of processing under (S)(ii) lie with the Department of State. When a potential (S)(ii) alien is identified, it must be determined that the alien is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956. The responsibility of carrying out this reward program under section 36(a) of that Act is delegated by the Secretary of State to the Assistant Secretary of State for Diplomatic Security. Section 226 of Volume 12 of the Foreign Affairs Manual sets forth the procedures established to carry out the requirements of section 36(a), processing of cases through the rewards committee. Determination of eligibility for receipt of a reward under section 36(a) made by the rewards committee is certified to the Assistant Secretary of State for Consular Affairs, to whom the Secretary has delegated the responsibility to implement the visa function under the Immigration and Nationality Act, which would necessarily include the recently added section 101(a)(15)(S). Acting on behalf of the Assistant Secretary for Consular Affairs, the Visa Office will then certify to the Attorney General the alien's eligibility for classification under subsection (s)(ii).

When determinations of entitlement to visa status under either section (S)(i) or (S)(ii) are completed, the INS, on behalf of the Attorney General, certifies such to the Visa Office which then communicates with the relevant consular post. The consular officer will process the visa application pursuant to guidance and instruction provided by the Visa Office. A visa may be authorized for the period necessary pursuant to the Attorney General's certification, but for a period not to exceed the three year statutory limit.

The implementation of the numerical limitation, as well as the adjustment of

status procedures, is addressed in the INS regulations, as that agency bears the responsibility for administering those provisions.

Interim Final Rule

Law enforcement agencies need access to the benefits provided in this legislation and, while the Department can administer the S visa on the basis of the INA, without regulations, use of the S visa by law enforcement agencies will be facilitated by prompt formulation of these regulatory provisions and the guidance, controls, and structure they afford. Moreover, given the unique characteristics of the S visa, as a classification available in the discretion of the Attorney General or Secretary of State for law enforcement and counter-terrorism purposes only, this regulation does not pertain to a visa classification that will be available to the general public. Prior notice and public comment with respect to this rule are therefore impracticable, unnecessary and contrary to the public interest. Under these conditions, there is good cause under 5 U.S.C 553 to make the rule effective upon publication, with public comments to be considered thereafter.

In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a ''significant adverse economic impact'' on a substantial number of small entities. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under INA 101(a)(15)(S), as amended. The rule imposes no reporting or recordkeeping action on the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12778 and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and Visas, Witnesses and Informants.

Accordingly, title 22, part 41 of the Code of Federal Regulations, is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 is revised to read as follows:

Authority: 8 U.S.C. 1104.

2. Part 41, Subpart I is amended by revising the heading to read as follows:

Subpart I—Fiance(e)s and Other Nonimmigrants

3. A new § 41.82 is added to read as follows:

§ 41.82 Certain Parents and Children of Section 101(a)(27)(I) Special Immigrants [Reserved]

4. A new § 41.83 is added to read as follows:

§ 41.83 Certain Witnesses and Informants.

(a) *General.* An alien shall be classifiable under the provisions of INA 101(a)(15)(S) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2)(i) The consular officer has received verification from the Department of State, Visa Office, that:

(A) in the case of INA 101(a)(15)(S)(i) the INS has certified on behalf of the Attorney General that the alien is accorded such classification, or

(B) in the case of INA 101(a)(15)(S)(ii) the Assistant Secretary of State for Consular Affairs on behalf of the Secretary of State and the INS on behalf of the Attorney General have certified that the alien is accorded such classification;

(ii) and the alien is granted an INA 212(d)(1) waiver of any INA 212(a) ground of ineligibility known at the time of verification.

(b) *Certification of S visa status.* The certification of status under INA 101(a)(15)(S)(i) by the Attorney General or of status under INA 101(a)(15)(S)(ii) by the Secretary of State and the Attorney General acting jointly does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of Visa.* The period of validity of a visa authorized on the basis of paragraph (a) of this section shall not exceed the period indicated in the certification required in paragraph (b) and shall not in any case exceed the period of three years.

Dated: December 6, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–1013 Filed 1–23–96; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE24–1–7156a; FRL–5401–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware Ozone Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Delaware State Implementation Plan (SIP) which pertains to the 1990 base year emission inventory for the marginal, moderate, and severe ozone nonattainment areas within the State. The ozone nonattainment areas consist of the counties of Sussex (marginal), New Castle and Kent (both severe). The SIP was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) for the purpose of attaining the national ambient air quality standard (NAAQS) for ozone. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 25, 1996, unless notice is received on or before February 23, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at EPA Region III address.

SUPPLEMENTARY INFORMATION: The Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware SIP on May 27, 1994. The SIP revision consists of 1990 base year emission inventories for the ozone

nonattainment areas within the State. In accordance with the requirements of 40 CFR 51.102, a public hearing concerning this SIP revision was held on May 3, 1994 in Dover, Delaware. No comments were received during the public hearing.

I. Background

Under the Clean Air Act (CAA), states have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAA requires ozone nonattainment areas designated as marginal, moderate, serious, severe, and extreme to submit a plan within two years of 1990 that contains a comprehensive, current, and accurate emission inventory. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the ''Emission Inventory Requirements for Ozone State Implementation Plans'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of Title I of the CAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAA, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's action and the supporting rationale. In today's rulemaking on the Delaware ozone base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C) if a submittal does not meet the completeness criteria, ''the state shall be treated as not having made the submission''. Under sections 179(a)(1) and 110(c)(1), a finding by EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan (FIP) processes (see David Mobley memorandum, November 12, 1992).

Criteria for Approval

There are general and specific components of an acceptable emission inventory. In general, the state must meet the minimum requirements for reporting each source category. Specifically, the source requirements are detailed below.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state, assesses whether the emissions were developed according to current EPA guidance, and evaluates the quality of the data.

The Level III review process is outlined below and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the QA program contained in the IPP was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to the current EPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.

8. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'', U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Levels I and II review procedures can be found in the following document: ''Quality Review Guidelines for 1990 Base Year Emission Inventories,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G.T. Helms to the Regions ''1990 O_3/CO SIP Emission Inventory Level III Acceptance Criteria,'' October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.

II. Description of State Submittal

A. Procedural Background

The CAA requires states to observe certain procedural requirements in developing emission inventory submissions to EPA. Section 110(a)(2) of the CAA provides that each emission inventory submitted by a state must be adopted after reasonable notice and

public hearing. A public hearing concerning this SIP revision was held on May 3, 1994 in Dover, Delaware. No comments were received during the public hearing.

Delaware submitted revisions to the SIP on May 27, 1994. The inventories were signed by the Governor's designee on the same date of the submittal.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The Delaware submittals were found to be complete and a letter dated June 14, 1994 was forwarded to the Governor's designee indicating the completeness of the submittal and the next steps to be taken in the review process.

B. Components of the Emission Inventories

Based on EPA's level III review findings, Delaware has satisfied all of EPA's requirements for purposes providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. A summary of EPA's level III findings is given below.

Delaware submitted draft IPPs to EPA for review. EPA approved the IPP and QA plan for Delaware in June 12, 1992.

1. The IPP and QA program have been approved and implemented.

2. The documentation was adequate for all emission types (stationary point, area, non-road mobile, on-road mobile and biogenic sources) for the reviewer to determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory was found to be complete.

4. The point source emissions were estimated according to EPA guidance.

5. The area source inventory was found to be complete.

6. The area source emissions were estimated according to EPA guidance.

7. The biogenic source emissions were estimated using PC–BEIS in accordance with EPA guidance.

8. The method used to develop VMT estimates was adequately described and documented.

9. The mobile model was used correctly.

10. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, Delaware submittal meets the essential reporting and documentation requirements for acceptable emission inventories.

C. Inventory Completeness Issues

Delaware has a SIP that will ensure that the requirements of section 182(a)(1) for emission inventory measures are adequately met. To comply with the emission inventory requirements, the state submitted complete inventories containing point, area, biogenic, on-road, and non-road mobile source data, and accompanying documentation. Emissions from these groupings of sources are presented in the tables below.

NAA	Area source emissions	Point source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
New Castle County Ozone Season Emissions in Tons Per Day						
VOC	34.75	27.08	35.28	16.67	17.51	131.30
NO_X	5.40	85.77	27.06	18.78	N/A	137.00
CO	21.91	40.72	245.40	104.24	N/A	412.27
Kent County Ozone Season Emissions in Tons Per Day						
VOC	12.96	3.24	13.07	3.50	32.46	65.23
NO_X	1.20	6.13	10.62	7.89	N/A	25.84
CO	8.47	0.51	100.51	20.25	N/A	129.73
Sussex County Ozone Season Emissions in Tons Per Day						
VOC	17.31	6.28	20.71	3.34	45.99	93.62
NO_X	1.78	54.24	16.66	7.01	N/A	79.68
CO	8.25	1.68	154.39	21.86	N/A	186.18

EPA has determined that the submittals made by Delaware satisfies the relevant requirements of the CAA. EPA's detailed review of the emission inventories are contained in Technical Support Documents which are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this rule.

EPA is approving the SIP revisions 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 become effective March 25, 1996 unless, by February 23, 1996, adverse or critical comments are received.

If EPA receives such comments, EPA will publish a document in the Federal Register withdrawing this rule before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 25, 1996.

III. Final Action

EPA is approving revisions to the Delaware SIP to include 1990 base year emission inventories for the ozone nonattainment areas within the state. The inventories consist of point, area, non-road mobile, biogenics and on-road mobile source emissions for VOC, NO_X and CO.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 1996. Filing a petition for reconsideration by the Administrator of this 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, regarding Delaware emission inventories, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 27, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.423 is added to read as follows:

§ 52.423 1990 Base Year Emission Inventory.

EPA approves as a revision to the Delaware State Implementation Plan the 1990 base year emission inventories for the Delaware ozone nonattainment areas submitted by the Secretary of the Department of Natural Resources and Environmental Control on May 27, 1994. This submittal consists of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_X).

[FR Doc. 96–920 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991–AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Correction to final regulations.

SUMMARY: This document corrects a technical error that appeared in 42 CFR part 1004 of the final rule published in the Federal Register on December 12, 1995 (60 FR 63634). The final rule was designed to revise and update the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations. Specifically, this correction notice sets forth the corrected text for section 1004.110(f) which contained a typographical error in subparagraph (2).

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: In the OIG final regulations published in the Federal Register on December 12, 1995, revising 42 CFR part 1004, a technical error was inadvertently made on page 63644, column one, in setting forth the text in section 1004.110, Notice of sanction. As corrected, section 1004.110(f) should read as follows:

§ 1004.110 Notice of sanction.

* * * * *

(f) If an exclusion sanction is effectuated because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows—

(1) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person, in compliance with the requirements of paragraph (c) of this section, affirming the PRO recommendation based on the OIG's review of the case, and that the exclusion is effective 20 days from the date of the notice; and

(2) Notice of sanction is also provided as specified in paragraph (e) of this section.

Dated: January 17, 1996.

Joel Jay Schaer,

Regulations Officer.

[FR Doc. 96–911 Filed 1–23–96; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF TRANSPORTATION

49 CFR Chapter X

[STB Ex Parte No. 525]

Surface Transportation Board; Transfer of Regulations from the Interstate Commerce Commission to the Surface Transportation Board Pursuant to the ICC Termination Act of 1995

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: Effective January 1, 1996, the ICC Termination Act of 1995 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation (DOT) the Surface Transportation Board (the Board). The Act provides that the Board shall perform a number of functions previously performed by the Commission. The Act further provides that, with certain exceptions, all regulations previously issued by the Commission shall continue in effect according to their terms until modified or terminated. The Board is therefore changing the name of the agency in the heading of the chapter in which the Commission's (now the Board's) regulations are issued, chapter X of subtitle B of title 49 of the Code of Federal Regulations.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, abolished the Commission and established the Board within DOT. See Act sections 2 (effective date) and 101 (abolition of the Commission). *See also* 49 U.S.C. 701 (establishment of the Board within DOT), as added by Act section 201(a).

The Act provides that, with certain exceptions, all regulations previously issued by the Commission and in effect on January 1, 1996, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board, any other authorized official, a court of competent jurisdiction, or operation of law. *See* Act section 204(a).

The Act further provides that, except as otherwise provided in the Act or in the amendments made thereby, the Board shall perform all functions that, immediately prior to January 1, 1996, were functions of the Commission or were performed by any officer or employee of the Commission in the capacity as such officer or employee. *See* 49 U.S.C. 702, as added by Act section 201(a). *See also* 49 U.S.C. 721(a) (authority of the Board to prescribe regulations), also as added by Act section 201(a).

Because the regulations previously issued by the Commission are now subject, for the most part, to the jurisdiction of the Board, the Board, by the action taken here, is changing the name of the agency in the heading of the chapter in which the Board's (formerly the Commission's) regulations are issued, chapter X of subtitle B of title 49 of the Code of Federal Regulations. Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

The Act makes numerous and substantial changes in subtitle IV of title 49, United States Code, and the Board intends to proceed, as expeditiously as its resources allow, to issue certain new regulations required by the Act and to conform its old regulations to the changes in the laws it administers. The actions taken in issuing new regulations and in revising old regulations will be, to varying degrees, substantive in nature. The action taken today, by contrast, is ministerial in nature: it simply changes the name of the agency in the heading of chapter X.

All persons referencing the chapter X regulations should be advised that certain of these regulations will henceforth be administered, in whole or in part, by the Secretary of Transportation. Such regulations will ultimately be removed from this chapter. *See* 49 U.S.C. 13101 to 14914 (authority of the Secretary of Transportation to administer, in part, 49 U.S.C. Subtitle IV, Part B), as added by Act section 103.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 18, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Board Member Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, subtitle B of the Code of Federal Regulations is amended by revising the heading for chapter X to read as follows:

CHAPTER X—SURFACE TRANSPORTATION BOARD, DEPARTMENT OF TRANSPORTATION

[FR Doc. 96–1155 Filed 1–23–96; 8:45 am]

BILLING CODE 4915–00–P

Federal Highway Administration

49 CFR Parts 382, 385, 391, 393, and 397

RIN 2125–AD71

Federal Motor Carrier Safety Regulations; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to various sections of the Federal Motor Carrier Safety Regulations to correct erroneous cross-references and to amend references in which the regulations referenced have been redesignated or removed. In addition, a cautionary note is added to appendix B of 49 CFR chapter III, subchapter B, to alert users of the CFR, that this appendix relates solely to Federal authority, has no application to a State's authority to enforce adopted regulations, and is not to be included in its present form in any general adoption of the regulations by the States.

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Neill Thomas, (202) 366–4009, Office of Motor Carrier Research and Standards, or Paul L. Brennan, Office of Chief Counsel, (202) 366–0834. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Rulemaking Analyses and Notices

Because this final rule simply amends various sections of the Federal Motor Carrier Safety Regulations to correct erroneous cross-references and to insert a missing subpart heading, the FHWA believes that prior notice and opportunity for comment are

unnecessary under 5 U.S.C. 553(b)(3)(B). Similarly, due to the editorial nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures. It is not anticipated that provision of a comment period would result in the receipt of useful information. In this final rule, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, the FHWA finds that good cause exists to dispense with the 30-day delay in the effective date required by 5 U.S.C. 553(d) due to the minor and technical nature of these amendments. Thus, the FHWA is proceeding directly with a final rule which will be effective on its date of publication.

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

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor a significant rulemaking under the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this action will not be substantial because this rule simply makes minor, technical corrections to the Federal Motor Carrier Safety Regulations. Therefore, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based upon this evaluation, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA has reviewed this action to ensure its compliance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not raise sufficient federalism issues to warrant the preparation of a separate Federalism Assessment. This final rule will not preempt any State law or State regulation, and no additional costs or burdens will be imposed on the States. In addition, this rule will have no effect on the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has reviewed this action to ensure compliance with the National Environmental Policy Act of 1960 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment. Thus, an environmental impact statement is not required.

Regulation Identification Number

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

List of Subjects in 49 CFR Parts 382, 385, 391, 393, and 397

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: January 5, 1996.

Rodney E. Slater,

Federal Highway Administrator.

The FHWA hereby amends 49 CFR chapter III as set forth below.

PART 382—[AMENDED]

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; 49 CFR 1.48.

2. In § 382.107, in the introductory text, the words ''or § 40.73'' are removed.

PART 385—[AMENDED]

3. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

§ 385.17 [Amended]

4. In § 385.17, paragraph (a) is amended by removing the reference ''§ 390.40'' and adding in lieu thereof the reference ''§ 390.27''.

PART 391—[AMENDED]

5. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

§ 391.49 [Amended]

6. In § 391.49, paragraph (b) is amended by removing the two references to ''§ 390.40'' and adding the reference ''§ 390.27'' in their stead.

PART 393—[AMENDED]

7. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

§ 393.25 [Amended]

8. In § 393.25, paragraph (b) is amended by removing the reference ''§ 393.18'' and adding in lieu thereof the reference ''§ 393.11''.

§ 393.42 [Amended]

9. In § 393.42, paragraph (b)(2) is amended by removing the reference ''§ 393.7(a)(3)'' and adding in lieu thereof the reference ''§ 393.71(a)(3)''.

PART 397—[AMENDED]

10. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 5101 *et seq.*; and 49 CFR 1.48.

11. In part 397, subpart A is amended to add the heading:

Subpart A—General

Appendix B—[Amended]

12. In Appendix B to subchapter B of Chapter III, add after the heading the following:

Appendix B to Subchapter B—Special Agents

Cautionary note: This appendix relates only to Federal authority to enforce the regulations in this subchapter. In its present form, it has no application for the States and is not to be included in any adoption of these regulations by State authorities as a condition of eligibility for grants under part 350 of this chapter.

* * * * *

[FR Doc. 96–861 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 951002243–6004–02; I.D. 092695B]

RIN 0648–AG99

Limited Access Management of Federal Fisheries In and Off of Alaska; Relieving Transfer Restrictions on Individual Fishing Quota Shares

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that would implement Amendment 32 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 36 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). This final rule is necessary to facilitate full utilization of the allocated resources managed under the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska and is intended to relieve transfer restrictions on Community Development Quota compensation quota shares (CDQ compensation QS), thereby allowing transfers to persons that could use the resulting IFQ to harvest the resource.

EFFECTIVE DATE: February 23, 1996.

ADDRESSES: Copies of the final rule and the Regulatory Impact Review (RIR) for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program for the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in the areas defined in 50 CFR 676.10 (b) and (c) is a regulatory regime recommended by the North Pacific Fishery Management Council (Council) to promote the conservation and management of these fisheries and to further the objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share (QS), which represents a transferable harvest privilege, receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest, within specified limitations, IFQ species. Further information on the implementation of the IFQ Program, and the rationale supporting it, is contained in the preamble to the final rule implementing the IFQ Program published November 9, 1993 (58 FR 59375). Additions and/or changes to the final rule implementing the IFQ Program were published June 1, 1994 (59 FR 28281); August 24, 1994 (59 FR 43502), corrected October 13, 1994 (59 FR 51874); October 7, 1994 (59 FR 51135); February 2, 1995 (60 FR 6448); March 3, 1995 (60 FR 11916); March 6, 1995 (60 FR 12152); May 5, 1995 (60 FR 22307); and August 31, 1995 (60 FR 45378).

The CDQ Program for Pacific halibut and sablefish was proposed and implemented in conjunction with the IFQ Program. The CDQ Program apportioned designated percentages of the annual fixed gear total allowable catch (TAC) for halibut and sablefish to eligible western Alaska communities. The harvest of these designated percentages was intended to provide residents of eligible communities with stable, long-term employment and to increase the participation of residents of eligible communities in near-shore fisheries.

Apportioning designated percentages of the annual fixed gear TAC for Pacific halibut and sablefish to eligible western Alaska communities reduced the amount of that TAC available for harvest by persons receiving annual allocations of IFQ. Therefore, CDQ compensation QS were issued as partial compensation to persons who received QS in CDQ areas, because the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas was reduced.

The final rule implementing Amendments 32 and 36 is intended to increase the remunerative value of CDQ compensation QS by relieving the existing transfer restrictions on initial recipients of those shares. Transfer restrictions are relieved by (1) exempting some CDQ compensation QS from the block provision, and (2) allowing some CDQ compensation QS to be transferred across vessel length categories.

Exemption From the Block Provision

The block provision was added to the IFQ Program to prevent excessive consolidation of fishing privileges, to promote higher levels of harvesting employment, and to provide diversity in fishing operations participating in the IFQ program. Preventing excessive consolidation was accomplished by (1) issuing as a block all initial allocations of QS that represented less than 20,000 lb (9 mt) of IFQ based on the 1994 TAC and (2) restricting persons from holding more than two blocks for each IFQ species and IFQ regulatory area. One unintended effect was the blocking of all CDQ compensation QS.

Blocked CDQ compensation QS, especially small blocks (several pounds to several hundred pounds of IFQ), is difficult to market because any block, no matter how small, is counted as part of the two-block restriction. This difficulty in marketing is contrary to the purpose of CDQ compensation QS, which is to compensate persons that received less QS in their traditional fishing areas because of allocations of the TAC to the CDQ Program. Exempting CDQ compensation QS from the block provision provides greater flexibility to persons that plan to transfer their CDQ compensation QS.

Transfer Across Catcher Vessel Length Categories

The Council included vessel length categories in the IFQ Program because of significant public concern that harvest privileges would be consolidated excessively into large vessel fishing operations. By restricting transfers across vessel length categories, the Council ensured that the fixed gear fishing fleet would remain relatively diversified and similar in overall character to the fleet prior to the program's implementation. The Council determined that maintaining a diversified fleet was critical to the socioeconomic well-being of coastal communities in Alaska that rely, in part, on the small vessel fleet as a source of revenue.

This objective would not be contradicted by a 1-year period of relief from the restriction against transferring across vessel length categories. Another vessel category designated by fish product type (Category ''A''—vessels of any length authorized to process IFQ species) was also included in the IFQ Program; however, because Category ''A'' is not restricted by length it is not included in the 1-year period of relief. A large portion of the CDQ compensation QS recipients are small vessel operators based in coastal communities located on the Bering Sea. This action would enable small vessel operators in the BSAI management area for sablefish and in IFQ regulatory areas 4A, 4B, 4C, and 4D for halibut to transfer their CDQ compensation QS in

the GOA to larger vessel operators who, in turn, could transfer their initially issued QS in the BSAI management area for sablefish and in IFQ regulatory areas 4A, 4B, 4C, and 4D for halibut to the small vessel operators. The coastal communities that rely on the small vessel fleet would be benefited by having IFQ in more accessible areas. Further, this action would not significantly change the overall character of the fleet because CDQ compensation QS accounts for less than 3 percent of the total amount of QS; therefore, the net gain or loss in any one vessel length category likely would be insignificant.

Comments on and Changes to the Proposed Rule

NMFS received no comments on the proposed rule. As no changes were suggested, NMFS has determined that the rule, as proposed, implements Amendments 32 and 36 as intended by the Council. The final rule contains two wording changes from the proposed rule. Both changes were for clarification only; the effects of the regulations in the final rule are the same as were proposed.

Classification

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities. Copies of the RIR can be obtained from NMFS (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this action does not have a significant economic impact on a substantial number of small entities.

This final rule has been categorically excluded from further environmental assessment pursuant to NOAA Administrative Order 216–6, section 6.02b.3.(b)(ii)(aa) because the actions pursuant to this rule do not result in a significant change in the original IFQ Program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule will not change the collection of information approved by OMB, OMB Control Number 0648–0272, for the Pacific halibut and sablefish IFQ Program.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: January 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 676.21, paragraph (h) is added to read as follows:

§ 676.21 Transfer of QS and IFQ.

* * * * *

(h) *Transfer across catcher vessel categories.* (1) Persons issued CDQ compensation QS in a catcher vessel category, pursuant to § 676.24(i), and in an IFQ regulatory area in which they do not hold QS other than CDQ compensation QS, may use that CDQ compensation QS on any catcher vessel. This exemption from catcher vessel categories ends upon the first transfer of the CDQ compensation QS. CDQ compensation QS being transferred will be permanently assigned to a specific catcher vessel category as designated by the person receiving the transfer.

(2) (Applicable until February 24, 1997). Catcher vessel QS transferred as partial or total consideration for the transfer of CDQ compensation QS may be redesignated into a new catcher vessel category if the CDQ compensation QS being transferred can be used on any catcher vessel pursuant to the exemption in paragraph (h)(1) of this section and the person to which that CDQ compensation QS was issued is party to the transfer.

(3) For purposes of this paragraph (h), CDQ compensation QS is quota share issued as compensation for Pacific halibut and sablefish harvest privileges foregone due to the CDQ Program, as provided in § 676.24(i).

3. In § 676.22, paragraph (a) is revised to read as follows:

§ 676.22 Limitations on use of QS and IFQ.

(a) The QS or IFQ specified for one IFQ regulatory area and one vessel category must not be used in a different IFQ regulatory area or vessel category, except as provided in paragraph (i)(3) of this section, or in § 676.21(h)(1).

* * * * *

4. In § 676.24, paragraph (i)(3) is revised to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(i) * * *

(3) Persons initially issued QS for IFQ regulatory areas in which a portion of the TAC is allocated to the CDQ Program will be compensated for halibut and sablefish harvest privileges foregone due to the CDQ Program. If a person does not hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be issued as unblocked. If a person does hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be added to their existing QS in that IFQ regulatory area. The resulting QS amount will be blocked or unblocked according to the criteria found at § 676.20(a). Compensation will be calculated for each non-CDQ area using the following formula:

$$Q_N=(Q_C\times QSP_N\times RATE) / (SUM_{CDQ}-[RATE\times SUM_{TAC}] ([1-RATE]\times TAC_{AVE}) (QSP_C\times[CDQ_{PCT}-RATE])$$

Where:

Q_N=quota share in non-CDQ area

Q_C=quota share in CDQ area

QSP_N=quota share pool in non-CDQ area (as existing on January 31, 1995)

$RATE=SUM_{CDQ}$/average of the TAC (1988–1994) for all CDQ and non-CDQ areas

TAC_{AVE}=average of the TAC (1988–1994) for CDQ area

QSP_C=quota share pool in CDQ area (as existing on January 31, 1995)

CDQ_{PCT}=CDQ percentage for CDQ area

SUM_{CDQ}=sum $[TAC_{AVE}\times CDQ_{PCT}]$

SUM_{TAC}=sum $[TAC_{AVE}]$

* * * * *

[FR Doc. 96–949 Filed 1–23–96; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Parts 217 and 227

[Docket No. 960116009–6009–01; I.D. 110695D]

RIN 0648–AE12

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities; Summer Flounder Fishery-Sea Turtle Protection Area

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

ACTION: Final rule.

SUMMARY: This final rule requires summer flounder bottom trawlers to have a NMFS-approved turtle excluder device (TED) installed in any net that is rigged for fishing in the waters off Virginia and North Carolina from 37°05′ N. lat. (Cape Charles, VA) southward to 33°35′ N. lat. (North Carolina-South Carolina border) year round, except for trawlers north of 35°46.1′ N. lat. (Oregon Inlet, NC), which are exempt from this requirement from January 15 through March 15 each year. However due to unavoidable delays, the exemption from this requirement in 1996 begins on January 23, 1996. This final rule allows the summer flounder bottom trawl fishery to continue fishing while providing adequate protection to endangered and threatened sea turtles.

EFFECTIVE DATE: January 23, 1996.

ADDRESSES: Requests for copies of the environmental assessment (EA) or Biological Opinion prepared for this rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Phil Williams, 301–713–1401, or Doug Beach, 508–281–9291.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq*. (ESA). According to the 1990 report on the decline of sea turtles, published by the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water. However, collectively, activities in non-shrimp fisheries, which include the summer flounder bottom trawl fishery, constitute the second largest source.

In a 1991 biological opinion in conjunction with Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery, NMFS concluded that the unrestricted operation of this fishery is likely to jeopardize the continued existence of the Kemp's ridley sea turtle, and provided, as a reasonable and prudent alternative, the use of tow-time limits and an observer program. Additional measures pursuant to the sea turtle conservation regulations at 50 CFR part 227 required the use of TEDs by the summer flounder fishery in certain areas in which bottom trawling occurred when sea turtles were present.

NMFS has taken a series of actions to require the use of TEDs in the bottom trawl fishery for summer flounder from 37°05′ N. lat. (Cape Charles, VA) southward to 33°35′ N. lat. (North Carolina-South Carolina border), defined as the ''summer flounder fishery-sea turtle protection area'' (hereinafter referred to as the protection area) and to require vessels to carry an observer, if requested to do so. These requirements were initially effective November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992), were extended from December 16, 1992, through January 14, 1993 (57 FR 60135, December 18, 1992), were modified and extended from January 7, 1993, through February 8, 1993 (58 FR 4088, January 13, 1993), and were extended from February 10, 1993, through April 10, 1993 (58 FR 5884, February 16, 1993). On September 20, 1993 (58 FR 48797) an interim final rule again required TED use by summer flounder trawlers in the bottom trawl fishery for summer flounder in the protection area defined above. On March 7, 1994 (59 FR 10584) the northern boundary of the protection area was moved south for a 60-day period to Oregon Inlet, NC. The specific requirements, their background and rationale, comments and responses to comments, and summaries of pertinent biological opinions were included in the cited Federal Register publications and are not repeated here. In addition, NMFS approved the Flounder TED described at 50 CFR 227.72(e)(4)(ii)(A) on October 20, 1993 (58 FR 54066) that was developed specifically for use in the summer flounder bottom trawl fishery.

Sea Turtle/Fisheries Interactions

NMFS has determined, based on past interactions between sea turtles and the summer flounder fishery, that bottom trawl nets fished without TEDs for summer flounder can capture sea turtles at a rate comparable with that of shrimp trawl nets fished without TEDs along the southern U.S. Atlantic coast. TED use is now required at all times in the shrimp trawl fishery.

In addition to documented, observed takes of endangered and threatened species of sea turtles in summer flounder trawls, sea turtle strandings in North Carolina have long been correlated with the activity of the summer flounder fleet. Street (1987) analyzed sea turtle stranding data from 1980–86 from North Carolina ocean beaches and concluded that the summer flounder fishery was responsible for 85 percent of the 456 sea turtle strandings that occurred during the October through April period when the summer flounder fishery is active. Even so, strandings are a minimal indication of actual sea turtle interactions with fishing activities: During the 1991–92 flounder season, the number of dead turtles that washed up on the beaches represented a maximum of 7 to 13 percent of the estimated fishery-induced mortalities (Epperly *et al*. in press).

In the months of October and November, when shallow, nearshore waters are still warm, sea turtles and summer flounder are present in higher numbers. Sea turtle presence is indicated by the strandings in North Carolina that occur coincidentally with the operation of the summer flounder bottom trawl fishery. From October 1993 through March 1994, there were 50 sea turtle strandings in North Carolina, and in the 1994–95 flounder season, 75 strandings occurred in North Carolina. Based on the recent observer data that document direct takes in the summer flounder fishery and the presence of sea turtles indicated by strandings, NMFS believes there continues to be a need to require the use of NMFS-approved TEDs in the summer flounder fishery.

NMFS has determined that the area where TEDs must be used in the summer flounder fishery can be seasonally decreased with minimal risk to sea turtles, based on temperature-driven distribution of turtles. Data acquired by satellite sensors indicate that sea surface temperatures off the coast of North Carolina north of Oregon Inlet are generally less than 11°C during the months of January through March. Aerial surveys conducted from November 1991 through March 1992 indicate that turtle abundance is related to water temperatures, with most turtles documented along the western edge of the Gulf Stream from the vicinity of Cape Hatteras southward where water temperatures were greater than 11°C (Chester *et al*., 1994; Epperly *et al*., 1995). NMFS has determined, based on reports from observers aboard trawlers

and from the scientific literature, that the probability of sea turtle captures is minimal when surface water temperatures fall below 11°C.

Except for the cold months of January through March, the co-occurrence of sea turtles and bottom trawling activities is likely in the waters off North Carolina and Virginia. Therefore, NMFS believes that the interim final rule (58 FR 48797, September 20, 1993) should be revised to move the northern boundary of the protection area south to Oregon Inlet, NC from January 15 through March 15 each year, and be adopted as final. NMFS will monitor conditions to determine if additional sea turtle protection measures are necessary.

Multi-Species Management

NMFS has reinitiated consultation on the Fishery Management Plan for the Summer Flounder Fishery to include the fisheries management of black sea bass and scup under the same biological opinion. Although the Mid-Atlantic Fishery Management Council has developed separate management plans for the scup and black sea bass fisheries, both NMFS and the Council have investigated the concept of managing the summer flounder, scup, and black sea bass, fisheries as one multi-species unit because the stocks of these three fisheries behave similarly in their movements north to south and offshore to inshore, and in fisheries targeting one species or another there is often a bycatch of the other species. Shepherd and Terceiro's (1994) analysis of commercial interactions between the fisheries showed that ''trips landing summer flounder without scup or black sea bass were most frequent (37 percent). The second largest component were trips consisting of all three species (30.7 percent). Trips landing only black sea bass, only scup or scup and black sea bass were relatively rare (1.9, 4.5, and 4.1 percent respectively). Most trips (56.6 percent) landed a multi-species catch with at least two of the three species.'' This study included both the Mid-Atlantic Bight and New England waters. Based on unpublished NMFS general canvass data, bottom otter trawls were used for approximately 74 percent of the commercial scup and 56 percent of the commercial black sea bass landings for the period between 1983 and 1992. A portion of those landings comes specifically from flynet gear that is used throughout the September-April season to target schools of weakfish, croaker, bluefish, scup and butterfish higher in the water column.

NMFS is considering implementing observer coverage, through the section 7 ESA process, on boats targeting these species with this gear type to provide specific, empirical data to assess the degree of interaction with listed species, and NMFS is encouraging development of a functional TED for flynets to fully assess the impact of this gear.

Comments on the Interim Final Rule

NMFS received a comment from the Center for Marine Conservation during the comment period for the interim final rule (58 FR 48797, September 20, 1993). NMFS' response was published on March 7, 1994 (59 FR 10584) and is not repeated here. NMFS also received a comment from the North Carolina Fisheries Association, Inc., in February, 1995, requesting that the northern boundary of the protection area be moved south automatically each year. NMFS agrees for the reasons set forth herein.

Changes from the Interim Final Rule

This final rule adopts as final the provisions of the interim final rule (58 FR 48797, September 20, 1993) with one change regarding the seasonal adjustment of the northern boundary of the protection area.

Summer flounder bottom trawlers in offshore waters south of Cape Charles, VA, to the North Carolina-South Carolina border, are required to have an NMFS-approved TED installed in each net that is rigged for fishing in the summer flounder fishery-sea turtle protection area year round except for trawlers north of 35°46.1′ N. lat. (Oregon Inlet, NC) which are exempt from the requirement from January 15 through March 15 each year. However due to unavoidable delays, the exemption from this requirement in 1996 begins on January 23, 1996. While there is a small risk to sea turtles associated with this exemption, NMFS has determined that this risk is minimal and will not jeopardize the continued existence of endangered and threatened sea turtles in a biological opinion prepared in conjunction with this final rule. While the seasonal exemption represents a change to the interim final rule currently in force, it is consistent with past NMFS policy and previous requirements. NMFS moved the northern boundary of the protection area south to Oregon Inlet during the 1992–93 season (58 FR 4088, January 13, 1993) and during the 1993–94 season (59 FR 10584, March 7, 1994). While the exemption was not provided during the 1994–95 season due to the lack of documented trawling effort in the affected area, NMFS believes that a permanent seasonal boundary change is justified. For these reasons, NMFS is incorporating the seasonal exemption from Cape Charles, VA, to Oregon Inlet, NC in the final rule. While previous rules implementing the exemption in 1993 and 1994 were based primarily on water temperatures, NMFS believes that the exemption in a permanent rule should be based on fixed dates to provide more certainty and consistency to fishermen. NMFS will, however, continue to monitor climatic conditions such as water temperature to ensure that turtles are not likely to be present in the areas where TED use is not required.

Based on this monitoring, NMFS may determine to reinstate the TED requirement north to Cape Charles, VA prior to March 15 or invoke additional conservation measures to protect sea turtles pursuant to 50 CFR 227.72(e)(6). Under that provision, the Assistant Administrator for Fisheries, NOAA (AA) may at any time, modify the requirements of this rule through notification in the Federal Register, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA will impose any necessary additional or more stringent measures, if he or she determines that summer flounder trawl vessels are having a significant adverse affect on sea turtles and additional takings are unauthorized pursuant to 50 CFR 227.72(e)(6)(ii). Likewise, conservation measures may be modified if the incidental take for the fishery is projected to reach the incidental take level established by the biological opinion for this rule issued as a result of consultation under section 7 of the ESA.

The AA will impose additional conservation measures on this fishery if the incidental take level is approached or exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles associated with summer flounder fishing activities occur. Such additional measures may include reinstating the TED requirement from Oregon Inlet to Cape Charles between January 15 and March 15 each year, or expanding the restricted area or the time during which TEDs are required or impose requirements to carry NMFS-approved observers at the expense of vessel owners or operators. The AA may withdraw or modify the requirement for specific conservation measures or any restriction on fishing activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, will be published in the Federal Register.

References

Previous references cited that are not included below are available in the biological opinion prepared for this action (see **ADDRESSES**).

Shepherd, G.R. and M. Terceiro. 1994. The Summer Flounder, Scup, and Black Sea Bass Fishery of the Middle Atlantic Bight and Southern New England Waters. NOAA Technical Report, NMFS 122. 13 pp.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

The interim final rule with one change—the seasonal adjustment of the northern boundary of the protection area—is adopted as final without further notice and opportunity for further public comment. The public has had ample opportunity to comment on the boundary adjustment in previous years, and these comments were responded to in previous years (58 FR 8554, February 16, 1993; 58 FR 48797, September 10, 1993; 59 FR 10584, March 7, 1994). No useful purpose would be served by providing additional opportunity for public comment.

Since the exemption for trawlers north of Oregon Inlet, NC, from January 15 to March 15 each year relieves a restriction on the fishery, under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effective date.

The AA prepared an EA for the final rule for Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (57 FR 57348, December 4, 1992). A copy of the EA prepared for this final rule is available (see **ADDRESSES**).

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: January 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim final rule amending 50 CFR parts 217 and 227, which was published at 58 FR 48797 on September 20, 1993, is adopted as a final rule with the following changes:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, in the definition for ''Summer flounder fishery-sea turtle protection area'', paragraph (2) is removed.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraph (e)(2)(iii)(A) is revised, paragraphs (B) and (C) are redesignated as paragraphs (C) and (D), respectively, and paragraph (B) is added, to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(iii) *Gear requirement—summer flounder trawlers*—(A) *TED requirement.* Except as provided in paragraph (e)(2)(iii)(B) of this section, any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED (as defined in § 217.12 of this chapter) installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler.

(B) *Exemptions from the TED requirement.* Any summer flounder trawler north of 35°46.1′ N. lat. (Oregon Inlet, NC) from January 15 through March 15 annually is exempt from the TED requirement of paragraph (e)(2)(iii)(A) of this section, unless the Assistant Administrator determines that TED use is necessary to protect sea turtles or ensure compliance, pursuant to the procedures of paragraph (e)(6) of this section.

* * * * *

[FR Doc. 96–961 Filed 1–23–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 16
Wednesday, January 24, 1996

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

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, 282, 284, and 285

[Amendment No. 371–2HT]

RIN 0584–AC14

Food Stamp Program, Regulatory Review: Alaska, the Commonwealth of the Northern Mariana Islands, PR, and Demonstration Projects

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program rules affecting Alaska, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and demonstration projects. This action is a result of a comprehensive, page-by-page review, of all existing Food Stamp Program regulations which was conducted in response to the President's efforts to reform the Federal regulatory system. The changes will eliminate prescriptive detailed processes and empower States to set their own procedures for case management and customer service; eliminate outdated and redundant regulatory requirements; and emphasize recipient responsibility for applying and reporting their circumstances properly.

DATES: Comments must be received on or before March 25, 1996 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

As part of his Regulatory Reform Initiative, the President instructed the heads of Executive departments and agencies in a March 4, 1995 memorandum to, among other things, complete a page by page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The review carefully considered the following issues:

Is this regulation obsolete?

Could its intended goal be achieved in more efficient, less intrusive ways?

Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?

Could private business, setting its own standards and being subject to public accountability, do the job as well?

Could the States or local governments do the job, making Federal regulation unnecessary?

The Food and Consumer Service (FCS) has completed its review of all regulations governing the administration of the Food Stamp Program. Based on the findings of the review, FCS will be issuing several proposed rules designed to eliminate or substantially revise the regulations contained in 7 CFR Parts 271 through 285.

In this rule, FCS is proposing to revise food stamp regulations affecting Alaska, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and demonstration projects. The revisions will streamline administration of the program, offer greater flexibility to State

agencies in enacting policy, and improve customer service.

Alaska—7 CFR 272.7

On November 4, 1980, the Department issued a final rule (45 FR 73003) establishing regulations for operation of the Food Stamp Program in rural Alaska. Those regulations provided for exceptions to normal program regulations designed to accommodate the unique demographic and climatic characteristics found in rural Alaska and, at the same time, to ensure the efficiency and effectiveness of program operations. Those regulations, though amended in parts during the past 15 years, have remained essentially the same since their original implementation.

As part of the President's Regulatory Review Initiative, the Department has reviewed the regulations for rural Alaska at 7 CFR 272.7 and has determined that consistent with the requirements of the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, they can be revised to grant the State of Alaska greater flexibility in administering the program. The Department is proposing to combine and reorganize some paragraphs in 7 CFR 272.7, and delete others. The major revisions are discussed below.

Current regulations at 7 CFR 272.7(a) explain the need for a separate section of regulations designed to accommodate the unique characteristics in rural Alaska. Current regulations at 7 CFR 272.7(b) explain that the regulations contained in 7 CFR 272.7, with the exception of the section dealing with treatment of resources, apply only to areas of Alaska designated as rural. Section 272.7(b) also lists the procedures the State agency must follow when designating areas in Alaska as rural.

Current regulations at 7 CFR 272.7(c) define some of the terms that appear in the regulations for rural Alaska. The regulations define ''fee agent'', ''Rural I Alaska'', ''Rural II Alaska'', ''Urban Alaska'', and ''State agency.''

Current regulations at 7 CFR 272.7(d) provide an exception to the merit personnel requirement at 7 CFR 272.4(a)(2) to permit fee agents to conduct the certification interviews required by 7 CFR 273.2(e).

In order to simplify the regulations, the Department is proposing to revise 7 CFR 272.7 (a), (b), (c) and (d) as follows. The requirements currently contained in 7 CFR 272.7 (a) and (b) will be combined into one section, designated 7 CFR 272.7(a). Revised 7 CFR 272.2(b) will be retitled ''Area Designations'', and will contain the definitions of ''Rural I Alaska'', ''Rural II Alaska'', and ''Urban Alaska.'' It will also include the procedures for designating areas as rural that were formerly contained in 7 CFR 272.7(b). Those procedures, however, will be greatly modified. The current provisions at 7 CFR 272.7(b) require the State agency to establish criteria for designating areas of the State as ''rural'', determine the areas that meet the rural criteria, and include both the criteria for designating rural areas and the designated areas in the Alaska State Plan of Operation as an addendum to the Program and Budget Summary Statement. As the regulations, however, already designate all areas in Alaska as either urban, rural I or rural II, the revised procedures will provide that the State agency, in consultation with FCS, may change the designation of any Alaska subdivision. In lieu of specific detailed criteria, the Department is proposing to allow the Alaska State agency to change the designation of subdivisions to reflect changes in demographics and the cost of food. Changes would be reflected in the State Plan of Operation and would also be published in the Federal Register, pursuant to the Administrative Procedure Act, 5 U.S.C. 553.

The proposed regulations at 7 CFR 272.7(c) will address fee agents. The revised section would contain the definition of fee agent currently contained in 7 CFR 272.7(c).

The Department is proposing to delete from the regulations the special definition of ''State agency'' currently provided at 7 CFR 272.7(c). That definition was included in the regulations to highlight a distinction between the State agency and fee agents. However, the Department believes that the definition of fee agent as provided in 7 CFR 272.7(c) already clearly implies that fee agents, although employed by the State agency, are not representatives of the State agency for application processing purposes.

The Department is also proposing to delete the merit personnel requirement currently contained at 7 CFR 272.7(d). As provided in 7 CFR 272.7(c), the definition of fee agent clearly provides that fee agents may conduct required certification interviews, and the Department does not believe that the statement needs to be restated. The Department is proposing, however, to amend the merit personnel requirements at 7 CFR 272.4(a)(2) to provide for an exception to the use of State merit system personnel in the interview and certification process for households residing in rural Alaska.

The Department is also proposing to delete the current provisions of 7 CFR 272.7(e), which require the State agency to institute a continuing training program for fee agents. It is in the State agency's own interest, for program accountability reasons, to ensure that all fee agents are adequately trained in program requirements and procedures. Therefore, the Department believes it is unnecessary to include a training requirement in the regulations.

The Department is proposing a major revision to the regulations currently at 7 CFR 272.7(f), which address application processing requirements. The current regulations go into minute detail as to how applications are to be processed, depending on whether they are submitted to a fee agent, in person to the State agency, or by mail to the State agency. It also addresses expedited service processing requirements and Supplemental Security Income (SSI) joint processing requirements. The Department is proposing to remove all prescriptive requirements from the section and allow the State agency to modify the regular application processing requirements contained at 7 CFR 273.2 as needed to ensure prompt delivery of services to applicant households. The proposed regulations will retain, however, those requirements which the State agency cannot modify when processing an application because of Food Stamp Act requirements. Those requirements are: (1) that if the application is submitted to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt of the application; (2) that an application is considered filed when it is received by an office of the State agency; (3) that eligible households shall be provided an opportunity to participate as soon as possible but no later than 30 days after the application is received by an office of the State agency; (4) that households eligible for expedited service who submit their application to a fee agent shall be issued benefits within two working days following the date the application is received by an office of the State agency, and that households eligible for expedited service who submit their completed applications to the State agency in person or by mail will be processed in accordance with standard expedited service timeframes contained in 7 CFR 273.2(i); and (5) that Social Security Administration (SSA) workers shall mail all jointly processed applications to the appropriate State agency office within 5 days of receipt of the application, and that the household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed

application was received by the SSA worker. The proposed revised regulations would be contained at 7 CFR 272.7(d).

The Department is also proposing a major revision to the regulations currently contained at 7 CFR 272.7(g), which address interview requirements. Current regulations require that the State agency or fee agent conduct a face-to-face interview with applicant households. If a face-to-face interview cannot be conducted for hardship reasons, then the State agency may interview the household by telephone or radiophone. If the household rejects, on privacy grounds, being interviewed by telephone or radiophone, the State agency may conduct the interview through private means of correspondence, such as written correspondence. The State agency also has the option of postponing the interview until after the household is certified in certain exceptional circumstances.

In order to maximize State agency flexibility in administering the program, the Department is proposing to delete current interview requirements at 7 CFR 272.7(g) and instead simply require the State agency to interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted before certification, the regulations will continue to grant the State agency the option to postpone the interview until after the household is certified. Since completing the interview is an integral part of application processing, the interview requirement will be included as paragraph (6) in the new application processing section at 7 CFR 272.7(d) and not in its own section.

In light of the proposals discussed above, current regulations at 7 CFR 272.7(h), which address the determination of household eligibility and benefit levels, would be redesignated as 7 CFR 272.7(e), but would otherwise remain unchanged.

Current regulations at 7 CFR 272.(i), which address resource requirements, will be redesignated as 7 CFR 272.2(f), but will otherwise remain unchanged.

Current regulations at 7 CFR 272.7(j) address the household's responsibility for reporting changes. The regulations provide the household the option of reporting changes either directly to the State agency or to the fee agent, and then go on to describe in detail how fee agents are to process changes reported to them. The Department believes that it is unnecessary for Program regulations to delineate fee agent actions relating to handling reported changes and is therefore proposing to eliminate those provisions from the regulations. The revised regulations will retain, however, all the timeframes for processing changes currently contained in 7 CFR 272.7(j). The revised section will be redesignated as 7 CFR 272.7(g).

The Department is proposing to delete the current regulations at 7 CFR 272.7(k), which address timeframes for recertification. The regulations at 7 CFR 272.7(k) repeat the normal recertification timeframes contained at 7 CFR 273.14, and do not provide for any special exceptions for households residing in rural Alaska.

Current regulations at 7 CFR 272.7(l) provide that if the State agency cannot conduct a personal conference with a household which wishes to contest its denial of expedited service within the two day timeframe specified in 7 CFR 273.15(d), it may conduct the conference by telephone or through other means of communication. Current regulations at 7 CFR 272.7(m) provide that the State agency may conduct fair hearings and administrative fraud hearings by telephone or other means of communication if the time standards contained at 7 CFR 273.15 and 273.16 cannot be met through normal administrative procedures due to impediments such as weather conditions or distance.

In order to maximize State agency flexibility in conducting required hearings and conferences, the Department is proposing to delete the current requirements at 7 CFR 272.7 (l) and (m). The Department will replace both sections with a single section that will apply to fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service. The new section, which will be designated 7 CFR 272.7(h), will require the State agency to conduct fair hearings, administrative fraud hearings, and agency conferences in the manner it deems most efficient, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in 7 CFR 273.15 and 273.16.

Finally, the Department is proposing to revise current regulations at 7 CFR 272.7(n), which address issuance requirements. The Department is proposing to redesignate paragraph (n)(1) as 7 CFR 272.7(i), but otherwise leave the paragraph unchanged. The Department is also proposing to delete the current requirements contained at 7 CFR 272.7(n) (2) and (3). Section 272.7(n)(2) allows the State agency to choose from a wide variety of issuance methods to fulfill the issuance service needs of the low income people in the State. Section 272.7(n)(3) requires that the State agency assist households comprised of elderly or disabled members which have difficulty reaching an issuance office to obtain their monthly allotments. Neither provision represents a change from normal program operations as described in 7 CFR 274.1 and 274.2. Therefore, the Department is proposing to delete both provisions.

Demonstration, Research, and Evaluation Projects—Part 282

Current regulations at 7 CFR Part 282 cite the legislative authority for conducting demonstration, research, and evaluation projects, establish Federal financial participation requirements, and set forth various conditions under which the projects operate. Part 282 also contains regulations published to establish the procedures for the operation of some previous demonstration projects.

It is the Department's belief that, aside from 7 CFR 282.1 and 282.6, which deal with statutory authority and financial participation and 282.5(a) which provides for public notice procedures for demonstration projects, the regulations contained in this section are duplicative, superfluous, or obsolete.

Sections 282.2, 3, 4, and 5(c) contain general information and procedures which are repeated in much greater detail in the Notices of Intent published by the Department when it undertakes demonstration, research or evaluation projects.

Sections 282.10 through 14 and sections 282.16 through 19 comprise the regulations published concerning past demonstrations (sections 282.7, 8, 9, and 15 were reserved). Each of the demonstrations have been terminated or are permanent operational programs.

The Department, therefore, is proposing to revise Part 282 by (1) combining the requirements currently contained at 7 CFR 282.1, 282.5 (a) and (b) and 282.6 into one new section 7 CFR 282.1, which will address the Secretary's legislative authority to conduct demonstration, research, and evaluation projects and Federal financial participation in such projects, and (2) deleting the remainder of Part 282.

The Commonwealth of the Northern Mariana Islands—Part 284

This rule proposes to remove and reserve Part 284 of the Food Stamp

Program regulations—Provision of a Nutrition Assistance Program for the Commonwealth of the Northern Mariana Islands (CNMI)—and to remove the Northern Mariana Islands from the definition of ''State'' in 7 CFR 271.2 of the regulations. The Nutrition Assistance Program which has been operating in the CNMI since 1982 is governed by a Memorandum of Understanding (MOU), the terms of which are renegotiated annually by the Department and the CNMI. The regulations in Part 284 are unnecessary for the continued operation of CNMI Nutrition Assistance Program. For example, a similar program operates in American Samoa without regulations; it is simply governed by an MOU. The Department's proposal to eliminate Part 284 should not be construed as an intent to modify the current CNMI Nutrition Assistance Program.

Puerto Rico—Part 285

On July 27, 1982, the Department published a final rule at 47 FR 32409 to implement Title I, Section 116(a) of the 1981 Omnibus Budget Reconciliation Act (Pub. L. 97–35, 95 Stat. 357), 7 U.S.C. § 2028. This section converted the Federal Food Stamp Program in the Commonwealth of Puerto Rico to a capped nutrition assistance block grant effective July 1, 1982. The original implementing regulations set forth in Part 285 at that time have been amended four times during their existence. On April 19, 1983 a rule was published at 48 FR 16831 pertaining to the termination of the Food Stamp Program in Puerto Rico. On May 27, 1983 a rule was published at 48 FR 23804 which prohibited the Commonwealth from using a cash benefit delivery system and restricted the amount of cash change which could be returned to a nutrition assistance recipient in the Commonwealth to 99 cents under any non-cash benefit delivery system Puerto Rico would implement. On December 21, 1984 a rule was published at 49 FR 49581 which permitted the Commonwealth to operate a cash rather than a coupon benefit delivery system for use in its block grant program. Finally, on May 21, 1986 a rule was published at 51 FR 18744 which permitted Puerto Rico to designate more than one agency to administer or supervise the administration of the food assistance program in the Commonwealth. Some of these amendments, together with portions of the original implementing regulations, are no longer applicable to the program as it currently operates in the Commonwealth. Other portions of Part 285, as currently written, are superfluous and no longer required for the efficient administration and operation of the block grant program in Puerto Rico. As a result, the Department proposes to amend Part 285 to effect the following changes.

Plan of Operation—7 CFR 285.3

The second sentence of paragraph (a) specifies that the submittal date for the initial plan of operation for fiscal years 1982 and 1983 is to be no later than April 1, 1982. Additionally, subparagraph (b)(3)(iii) permits Puerto Rico to provide recipients with cash change in amounts of 99 cents or less if change in an amount of less than $1 is required. Since the 1982 and 1983 plans of operation were submitted many years ago, and Puerto Rico no longer operates a coupon delivery system to distribute its block grant benefits, both of these provisions are no longer applicable to the Commonwealth's nutrition assistance program and the Department proposes to delete them from this section.

The Department also proposes to incorporate the provisions of section 285.4 into this section. Both sections deal with Puerto Rico's state plan of operation and the Department believes that both sections should be consolidated into one for ease of reference.

Approval—7 CFR 285.4

The first sentence of paragraph (a) states that FCS shall approve or disapprove the initial plan of operation for fiscal year 1982 and 1983 no later than 30 days from the date the Commonwealth of Puerto Rico submits such plan. This approval process was completed many years ago and the sentence is no longer applicable to program operations. The Department, therefore, proposes to delete this provision and combine the remainder of the section with section 285.3 as both of these sections deal in various ways with the submission and approval of the Commonwealth's plan of operation for its nutrition assistance program.

Records and Reports—7 CFR 285.5

This section provides that the Commonwealth of Puerto Rico shall follow procedures, and maintain and submit to FCS such records and reports, as agreed upon by the Commonwealth of Puerto Rico and FCS for the nutrition assistance program as outlined in the plan of operation. Procedures for the submission of required reports and their content as well as for the retention of program records have been in place since inception of the block grant and are generally outlined in annual state plans of operation submitted by the Commonwealth. The Department, therefore, believes that this section is no longer necessary for efficient program operations and proposes to delete it in its entirety.

Review—7 CFR 285.8

This section provides that FCS shall provide for the review of the programs for provision of nutrition assistance under the block grant. FCS has been reviewing Puerto Rico's nutrition assistance program on an agreed upon and periodic basis since its inception in 1982. Since this procedure is a well established one to which both parties agree, the Department believes this section is no longer required and should be deleted in its entirety.

Technical Assistance—7 CFR 285.9

This section provides that FCS may provide technical assistance to the Commonwealth of Puerto Rico to assist in various aspects of the implementation and operation of its nutrition assistance program. This assistance has been an integral part of FCS's efforts to cooperate with the Commonwealth in ensuring the success of its block grant program since its inception in 1982. Since this assistance is an ongoing and well recognized facet of the relationship between Puerto Rico and FCS, the Department believes that this section is no longer required and should be deleted in its entirety.

Termination of the Food Stamp Program in the Commonwealth of Puerto Rico—7 CFR 285.10

This section contains a number of provisions pertaining to the cessation of Food Stamp Program operations in the Commonwealth. Since the Food Stamp Program ceased operation in Puerto Rico as of July 1, 1982 and the block grant nutrition assistance program was implemented in its place at that time, this section is no longer applicable to current program operations. The Department is, therefore, proposing that the section be deleted in its entirety.

Implementation

The Department is proposing that the provisions of this rulemaking be effective no later than 30 days after publication of the final rule. State agencies may implement the provisions any time after that date.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 282

Food stamps, Governmental contracts, Grant programs—social programs, Research.

7 CFR Part 284

Administrative practice and procedure, Food assistance programs, Grant programs—social programs, Health, Nutrition.

7 CFR Part 285

Accounting, Food assistance programs, Grant programs—agricultural, Grant programs—social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 271, 272, 282, 284, and 285 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citations for 7 CFR parts 271, 272, 282, 284, and 285 continue to read as follows:

Authority: 7 U.S.C. 2011–2032.

§ 271.2 [Amended]

2. In § 271.2, the definition of ''State'' is amended by removing the words ''the Northern Mariana Islands,''.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.4 [Amended]

3. In § 272.4, the third sentence of paragraph (a)(2) is amended by adding the words, '', § 272.7(d) for households residing in rural Alaska,'' before the words ''and Part 280 for disaster victims.''

4. § 272.7 is revised to read as follows:

§ 272.7 Procedures for program administration in Alaska.

(a) *Purpose.* To achieve the efficient and effective administration of the Food Stamp Program in rural areas of Alaska, FCS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this section, except for paragraph (f) of this section, shall apply only in those areas of Alaska designated as ''rural'' in paragraph (b) of this section. All regulations not specifically modified by this section shall remain in effect.

(b) *Area designations.* (1) Rural I Alaska TFP refers to a Thrifty Food Plan (TFP) that is the higher of the TFP that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: In all places in Kodiak Island Borough with the exception of Kodiak; in all places in the Kenai Peninsula Borough that are west of Cook Inlet (including Tyonek, Kustatan, Kalgin Island, Iliamna, Chenik, and Augustine Island) and Chugach Island, English Bay, Port Graham, Portlock, Pt. Gore, Pye Island, and Seldovia. In the Yukon-Koyukuk Census Area, the city of Nenana; and Skwentna in the Matanuska-Susitna Borough. In the Valdez-Cordova Census Area, all places except Dayville and Valdez; and in the Southeast Fairbanks Census Area all places except Big Delta, Delta Junction, and Fort Greely. In the Skagway-Yakutat-Angoon Census Area, all places except Skagway; in Sitka Borough all places except Sitka; in the Wrangell-Petersburg Census Area, all places except Wrangell and Petersburg; in the Ketchikan Gateway Borough, all places except Ketchikan, Saxman, and Ward Cove; in the Prince of Wales-Outer Ketchikan Census Area, all places except Craig, Hyder, and Metlakatla.

(2) Rural II Alaska TFP refers to a TFP that is 56.42 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough; Kobuk Census Area; Nome Census Area; Yukon-Koyukuk Census Area except for the city of Nenana; Wade Hampton Census Area; Bethel Census Area; Denali in the Matanuska-Susitna Borough; Dillingham-Bristol Bay Borough; and in all places in the Aleutian Islands except for Cold Bay and Adak.

(3) Urban Alaska TFP refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FCS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Cold Bay and Adak in the Aleutian Islands; Kodiak in Kodiak Island Borough; Valdez and Dayville in the Valdez-Cordova Census Area; all places in Kenai Peninsula Borough that are on the Kenai Peninsula except for those specifically designated as Rural I; the entire Anchorage Borough; the entire Matanuska-Susitna Borough except for Denali and Skwentna; the entire Fairbanks-North Star Borough; the entire Juneau Borough; the entire Haines Borough; Sitka in the Sitka Borough; Skagway in the Skagway-Yakutat-Angoon Census Area; Wrangell and Petersburg in the Wrangell-Petersburg Census Area; Ketchikan, Saxman, and Ward Cove in the Ketchikan-Gateway Borough; Craig, Hyder, and Metlakatla in the Prince of Wales-Outer Ketchikan Census Area; and Big Delta, Delta Junction, and Fort Greely in the Southeast-Fairbanks Census Area.

(4) The State agency may, in consultation with FCS, change the designation of any Alaska subdivision to reflect changes in demographics or the cost of food within the subdivision.

(c) *Fee agents.* ''Fee agent'' means a paid agent who, on behalf of the State, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(d) *Application processing.* The State agency may modify the application processing requirements in § 273.2 of this chapter as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(1) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. The fee agent shall give the household the maximum amount of time to provide needed verification as long as the five-day processing period is met.

(2) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State agency.

(3) *Application processing timeframes.* Eligible households must be provided an opportunity to participate as soon as possible but no later than 30 days after the application is received by an office of the State agency.

(4) *Expedited service.*

(i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the coupons no later than the close of business of the second working day following the date the application was received by the State agency.

(ii) If the signed application is submitted directly to the State agency in person by a rural resident or its authorized representative or by mail, the State agency shall process the application and issue coupons to households eligible for expedited service in accordance with the time standards contained in § 273.2(i)(3) of this chapter.

(iii) If an incomplete application is submitted directly to the State agency by mail, the State agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio-phone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State agency shall complete the application and process the case. Because of the mailing time in rural areas, the State agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(5) *SSI joint processing.* SSA workers shall mail all jointly processed applications to the appropriate State agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(6) *Interviews.* The State agency shall interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted, the State agency may postpone the interview until after the household is certified.

(e) *Determining household eligibility and benefit level.* If a household submits its application to a fee agent, it shall, if eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household submits its application directly to a State agency office, it shall, if determined eligible, receive benefits retroactive to the date the application is received by the State agency.

(f) *Resources.* In areas of the State where there are no licensing requirements, snowmobiles and boats used by the household for basic transportation shall be evaluated in accordance with § 273.8(h) of this chapter even though they are unlicensed. Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

(g) *Reporting changes.* The State agency shall allow the household to choose to report changes either directly to the State agency or to the fee agent. If the household reports the change to the fee agent, the fee agent will mail the change report to the State agency office within two working days of the date of receipt. The household's obligation to report the change will have been met if it submits the change to the fee agent within 10 days of the date the change becomes known to the household. However, for purposes of State agency action for increasing or decreasing benefits, the change will be considered to have been reported when it is received by a State agency office.

(h) *Fair hearings, fraud hearings, and agency conferences.* The State agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in § 273.15 and § 273.16 of this chapter.

(i) *Issuance services.* With the approval of FCS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis. These areas shall be listed in the State's Plan of Operation. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the State agency shall process claim determinations and restore lost benefits.

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

5. § 282.1 is revised to read as follows:

§ 282.1 Legislative authority and notice requirements.

(a) *Legislative Authority.* Section 17 of the Act authorizes the Secretary to conduct demonstration, research, and evaluation projects. In conducting such projects, the Secretary may waive all or part of the requirements of the Act and implementing regulations necessary to conduct such projects, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households or a project conducted to test improved consistency or coordination between the food stamp employment and training program and the Job Opportunities and Basic Skills program under Title IV of the Social Security Act, may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Notices.* At least 30 days prior to the initiation of a demonstration project, FCS shall publish a General Notice in the Federal Register if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project. If the operational procedures contained in the General Notice described above are significantly changed because of comments, an amended General Notice will be published in the Federal Register at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General notice will also explain the basis and purpose of the change.

§§ 282.2–282.19 [Removed]

6. §§ 282.2 through 282.19 are removed.

7. A new § 282.2 is added to read as follows:

§ 282.2 Funding.

Federal financial participation may be made available to demonstration, research, and evaluation projects awarded by FCS through grants and contracts. Funds may not be transferred from one project to another. FCS will pay all costs incurred during the project, up to the level established in the grant, or in the terms and conditions of the contract. FCS may grant time extensions of the project upon approval. Funding for additional costs is subject to existing Federal grant and contract procedures.

PART 284—[REMOVED AND RESERVED]

8. Part 284 is removed and reserved.

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

§ 285.2 [Amended]

9. In § 285.2, the first sentence of paragraph (b) is amended by removing the citations ''§§ 285.4 and 285.7 in this part'' and adding ''§§ 285.3 and 285.5'' in their place.

10. In § 285.3:

a. The second sentence of paragraph (a) is removed.

b. The third sentence of paragraph (a) is amended by removing the word ''subsequent''.

c. Paragraph (b)(3)(iii) is removed.

d. New paragraphs (d), (e), (f), (g), and (h) are added.

The additions read as follows:

§ 285.3 Plan of operation.

* * * * *

(d) FCS shall approve or disapprove any plan of operation no later than August 1 of the year of its submission. FCS approval of the plan of operation shall be based on an assessment that the nutrition assistance program, as defined in the plan of operation, is:

(1) Sufficient to permit analysis and review;

(2) Reasonably targeted to the most needy persons as defined in the plan of operation;

(3) Supported by an assessment of the food and nutrition needs of needy persons;

(4) Reasonable in terms of the funds requested;

(5) Structured to include safeguards to prevent fraud, waste, and abuse in the use of grant funds; and

(6) Consistent with all applicable Federal laws.

(e) FCS shall approve or disapprove any amendments to those provisions of the plan of operation specified in paragraph (b) of this section. If FCS fails either to approve or deny the amendment, or to request additional information within 30 days, the amendment to the plan of operation is approved. If additional information is requested, the Commonwealth of Puerto Rico shall provide this as soon as possible, and FCS shall approve or deny the amendment to the plan of operation. Payment schedules and other program operations may not be altered until an amendment to the plan of operation is approved. The Commonwealth of Puerto Rico shall, for informational purposes, submit to FCS any amendments to those provisions of the plan of operation not specified in paragraph (b) of this section. Such submittal shall be made at least 30 days prior to the effective date of the amendment. If circumstances warrant a waiver of the 30-day requirement, the Commonwealth of Puerto Rico shall submit a waiver request to FCS for consideration. Should FCS determine that such an amendment relates to the provisions of paragraph (b) of this section, FCS approval as established in this paragraph will be necessary for the amendment to be implemented.

(f) FCS may approve part of any plan of operation or amendment submitted by the Commonwealth of Puerto Rico contingent on appropriate action by the Commonwealth of Puerto Rico with respect to the problem areas in the plan of operation.

(g) If all or part of the plan of operation is disapproved, FCS shall notify the appropriate agency in the Commonwealth of Puerto Rico of the problem area(s) in the plan of operation and the actions necessary to secure approval.

(h) In accordance with the provisions of § 285.5, funds may be withheld or denied when all or part of a plan of operation is disapproved.

§§ 285.4–285.5 [Removed]

11. § 285.4 and § 285.5 are removed.

§ 285.6 [Redesignated as § 285.4]

12. § 285.6 is redesignated § 285.4.

§ 285.7 [Amended]

13. In § 285.7:

a. The section is redesignated 285.5.

b. The first sentence of paragraph (a) is amended by removing the citation ''§ 285.6'' and adding ''§ 285.4'' in its place.

c. The first sentence of paragraph (b) is amended by removing the citation ''§ 285.6'' and adding ''§ 285.4'' in its place.

§§ 285.8–285.10 [Removed]

14. § 285.8 through § 285.10 are removed.

Dated: January 5, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–887 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 985

[FV95–985–5PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1996–97 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by February 23, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, PO Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–

674), hereinafter referred to as the ''Act.''

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1996–97 marketing year, which begins on June 1, 1996. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the marketing order, the Committee recommended the salable quantities and allotment percentages for the 1996–97 marketing year at its September 26, 1995, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil in a vote of six in favor and one opposed. The member voting in opposition favored the establishment of a higher salable quantity and allotment percentage. The Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil in a vote of seven in favor and none opposed. The Chairman abstained from voting on both actions.

This proposed rule would establish a salable quantity of 989,303 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,074,902 pounds and an allotment percentage of 54 percent for Native spearmint oil. This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1996–97 marketing year, which begins on June 1, 1996. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The Committee revised its procedure for calculating the salable quantity and allotment percentage for Scotch spearmint oil this season by using a formula based on that portion of the entire North American market share targeted by the Far West. The Committee chose to use a targeted percentage of the North American market share in its deliberations due to the increased production of Scotch spearmint oil in Canada and certain domestic areas outside of the Far West production area. The Far West spearmint oil industry maintained approximately 72 percent of the North American Scotch spearmint oil market share during 1980, the marketing order's first year of operation. By 1994, this had gradually diminished to the point where the Far West had sales of Scotch spearmint oil representing approximately 52 percent of the North American market. Reestablishing the Far West with a majority of the North American market share is a priority of the Committee, while at the same time maintaining market stability. Although desiring to regain the market share level realized in 1980, the Committee plans to work at achieving this goal over a period of several years.

The method of calculating the Native spearmint oil salable quantity and allotment percentage remains unchanged, with the primary consideration being price and available supply as affected by the estimated trade demand for Far West spearmint oil. United States production of Native spearmint oil is centered in the Far West which produces approximately 90 percent of the total supply.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1996–97 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June l, 1996—196,384 pounds. This number is derived by subtracting the estimated 1995–96 marketing year trade demand of 862,784 pounds from the revised 1995–96 marketing year total available supply of 1,059,168 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1996–97 marketing year—1,549,316 pounds. This number is an estimate based on Committee information provided by producers and buyers.

(C) Percentage of North American market targeted—64.67 percent. This number is an average of the recommended target percentages made at each of the six regional producer meetings held throughout the Far West

production area during the month of September, 1995.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,001,891 pounds. This number is the product of the estimated 1996–97 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—191,667 pounds. This number is an average of those amounts recommended by producers at the six regional producer meetings, and reflects the Committee's commitment in regaining market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,193,558 pounds. This number is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—997,174 pounds. This represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 196,384 pounds from the total supply required of 1,193,558 pounds.

(H) Total allotment base for the 1996–97 marketing year—1,798,732 pounds.

(I) Computed allotment percentage—55 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent.

(K) The Committee's recommended salable quantity—989,303 pounds.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1996—44,959 pounds. This number is derived by subtracting the estimated 1995–96 marketing year trade demand of 1,084,436 pounds from the revised 1995–96 marketing year total available supply of 1,129,395 pounds.

(B) Estimated trade demand (domestic and export) for the 1996–97 marketing year—1,084,436 pounds. This number is an estimate based on the average of total annual sales made between 1988 and 1994, handler estimates, and Committee information provided by producers and buyers.

(C) Salable quantity required from 1996 production—1,039,477 pounds. This number is the difference between the estimated 1996–97 marketing year trade demand and the estimated carry-in on June 1, 1996.

(D) Total allotment base for the 1996–97 marketing year—1,990,559 pounds.

(E) Computed allotment percentage—52.2 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—54 percent. The Committee recommended a percentage slightly higher than that computed so as to maintain an ample supply of Native spearmint oil available for the market.

(G) The Committee's recommended salable quantity—1,074,902 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent for Scotch and Native spearmint oils, respectively, are based on anticipated 1996–97 marketing year supply and trade demand. The relatively higher recommended salable quantities and allotment percentages for both Scotch and Native spearmint oils for the 1996–97 marketing year, when compared to those initially recommended for the 1995–96 marketing year, are demonstrative of the Committee's concern with the increasing production of spearmint oil, both inside and outside the marketing order production area, and the industry's desire to maintain a significant share of the North American market while maintaining the overall stability of the market.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantitities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1996–97 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.215 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.215 Salable quantities and allotment percentages—1996–97 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1996, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 989,303 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,074,902 pounds and an allotment percentage of 54 percent.

Dated: January 17, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–927 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 150

[Docket No. PRM–150–3]

Measurex Corp.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Measurex Corporation. The petition was docketed by the Commission, and was assigned Docket No. PRM–150–3. The petitioner requested that the NRC amend its regulations concerning Agreement State regulation of byproduct material to require Agreement States to notify the NRC of proposed and completed regulatory actions and to require that the NRC publish notices of Agreement States' proposed and completed rulemakings. The NRC is denying the petition because there would be no safety benefit by NRC actions to consolidate and further disseminate this information; the process of collecting and disseminating this information would place a significant administrative and economic burden on the NRC and the Agreement States; and the information sought by the petitioner on proposed and completed Agreement State rulemakings is already available from a number of sources.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, the petitioner's response to these comments, the NRC's letter of denial to the petitioner, and the Congressional letters are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tony DiPalo, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, T9F31, Washington, DC 20555–0001. Telephone: 301–415–6191.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated April 7, 1994, submitted by Ms. Elsa Nimmo for the Measurex Corporation, a manufacturer, distributor, and supplier of services for process control sensors used by NRC and Agreement State licensees throughout the United States. The petition was docketed as PRM–150–3 on April 12, 1994.

The NRC published a notice that announced the receipt of the petition and requested public comment on the suggested amendments in the Federal Register of October 5, 1994 (59 FR 50706). The petitioner requested that the NRC amend its regulations in 10 CFR part 150 that concern Agreement State regulation of byproduct material. Specifically, the petitioner sought an amendment to 10 CFR 150.31 that would have required each Agreement State to notify the NRC of proposed and completed changes to that State's regulations.

The petitioner also sought an amendment to 10 CFR part 2 that would have required the NRC to publish notices of these regulatory changes in the Federal Register. The petitioner noted that current NRC requirements contained in §§ 2.804 through 2.807 of Title 10 of the Code of Federal Regulations establish a procedure for the publication of proposed changes, participation by interested persons, and notification of changes; however, the petitioner believes that a less detailed set of rulemaking and notification procedures is specified in 10 CFR 150.31. The petitioner also states that, in their experience, the 10 CFR 150.31 rulemaking and notification procedure fails to provide a mechanism for persons located outside any particular Agreement State to learn about proposed changes in that State's regulations. In the absence of such a mechanism, the petitioner believes that they and others are excluded from the opportunity clearly intended by 10 CFR 150.31 to participate in discussion of the proposed rules.

The petitioner indicated that although it makes a substantial effort to learn about proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations, it is not always notified of actual changes that may directly affect it and its customers in the Agreement States. For example, the Petitioner noted that under both its specific license for device distribution issued by the Agreement State of California, and the general license issued by other Agreement States, it is required to provide generally licensed device recipients with a copy of the applicable Agreement State regulations. The petitioner believed that the proposed amendments to 10 CFR parts 2 and 150 would alert the NRC and Agreement State licensees of all relevant Agreement State requirements and permit them to more fully participate in the rulemaking process.

Discussion of the Petition

The petitioner's primary concern is that it and other NRC licensees are not always notified of proposed and completed changes in Agreement State regulations that may affect licensees and their customers in those Agreement States. The petitioner is also concerned that because it is often not aware of Agreement State regulatory actions, it does not have the opportunity to fully participate in the rulemaking process as is intended by NRC regulations. As part of the petition for rulemaking, the petitioner included copies of correspondence with Agreement State radiation control boards and the NRC, and cited specific cases with the Agreement States of Oregon and Texas that it believed illustrated why the current rules are deficient and in need of revision.

In Oregon, for example, regulatory changes were proposed that would have eliminated the general license authorizing the petitioner to install, transfer, demonstrate, or provide service and would require the petitioner to obtain a specific license from Oregon in order to conduct business. These regulatory changes were never approved. Nevertheless, the petitioner states that had Oregon's proposed regulations been adopted, it would be able to ship sensors to a customer in Oregon only after confirming that the customer has an appropriate specific license. The petitioner was concerned that interested parties were not provided ample opportunity to comment on Oregon's proposed rules or to participate in their rulemaking process. The petitioner felt that although it attempted to learn about any proposed or adopted regulatory changes by writing to the Oregon Radiation Control Section on several occasions (between June 1991 and January 1994), it did not receive a response. Lack of response led the petitioner to believe that Oregon had not modified its 1987 radiological control regulations even though the current version of the Oregon Administrative Rules for the Control of Radiation was adopted in 1991. The petitioner indicated that it only became aware of the proposed changes to Oregon's regulations in February 1994 when informally contacted by an out-of-state health physics colleague.

In the case of Texas, the petitioner indicated that they did not learn about certain regulatory modifications adopted in 1993 by the Agreement State of Texas until after these rules became effective. At that time, the petitioner believed that the involved agency, in this case the Texas Department of Health, Division of licensing, Registration and Standards, Bureau of Radiation Control, knew these changes would affect out-of-State firms since the petitioner was notified in writing by this agency in September 1993 about some of the changes after they had been adopted. However, the petitioner felt they had no opportunity to participate in the rulemaking process and also

believed these regulatory modifications would directly affect its business in Texas.

The petitioner noted that some State's radiation control agencies are conscientious in notifying out-of-state distributors or service groups about proposed and completed regulatory changes, but many do not make such an effort. For these reasons, the petitioner indicated that it and other similar service groups have no way of knowing when copies of a State's regulations are no longer valid and, consequently, have no opportunity to participate in the rulemaking process. The petitioner also felt that its effort to gain information regarding Agreement State regulatory changes was costly, time-consuming, and often ineffective.

To alleviate this situation, the petitioner proposed that 10 CFR 150.31 be amended to require Agreement States to notify the NRC of both proposed and completed regulatory actions to adopt, amend, or repeal regulations and that 10 CFR Part 2 be amended to require the NRC to publish Agreement State notices of proposed and completed rulemakings in the Federal Register. However, with regard to 10 CFR 150.31 the staff noted that this requirement applies only to AEA 11 (e) 2 byproduct material (Uranium Mill Tailings) rather than regular ''Byproduct Materials.''

Summary of Public Comments

The October 5, 1994, Notice of receipt invited interested parties to submit written comments concerning the petition. The NRC received 17 comment letters. Ten comment letters were received from States represented by their Departments of Health, Natural Resources, Environmental Quality, and Nuclear Safety; 4 came from industry representing distributors and suppliers of services for individual process measurement systems; 1 from a private consultant, 1 from a citizens group, and 1 joint comment representing two professional groups.

The petition proposed two amendments. The first was to amend 10 CFR 150.31 to (in most cases) require Agreement States to notify the NRC of both proposed and completed action to adopt, amend, or repeal regulations. The second was to amend 10 CFR Part 2 to require the NRC to publish in the Federal Register the Agreement State Notices of proposed and completed rulemakings.

Of the 17 comments received, 11 opposed the petition, 5 favored granting the petition through rulemaking, and 1 supported the petition's request but, preferred a simpler approach as an alternative to rulemaking. The commenters opposed to the petition did so on the following basis:

(i) A State respondent indicated that its State properly and routinely notifies the NRC of proposed and completed regulatory actions at both the headquarters and regional level. The respondent also indicated that its State routinely seeks comments from the NRC before promulgation of a State regulation to ensure the NRC is aware of these revisions.

(ii) A State respondent cited an example given by the petitioner of a misunderstanding about notification of a proposed rule the State was developing that was successfully resolved. The respondent indicated that the State not only gave the party involved (in this case the Measurex Corporation) the information requested, but the comment period was extended to allow the petitioner time to formulate comments for submittal to the Oregon State Public Hearing Officer. The petitioner's comments were reflected in the final rule. Oregon, has modified its computerized mailing lists and, in the future, the petitioner will receive routine mailings of all regulatory notices.

(iii) A State respondent indicated that it can be safely assumed that all Agreement States have some minimum notice requirement for the purpose of due process, and that seeking local relief is far preferable to a national rule. Therefore, if the petitioner has a problem with the due process requirements of a particular State, relief lies with that State's officials and the State's legislative/political process. Along this line, several State respondents indicated that they have their own laws and administrative procedures which they follow for rulemaking. Under these requirements, Agreement States maintain registers in which proposed and completed regulations are published and to which interested parties can subscribe. One State commenter noted that under its public records law it is required to make copies available on request of its proposed and completed regulations. Another State respondent indicated that the name, address, and telephone number of Agreement State officials can be found in the Conference of Radiation Control Program Directors' Directory of Personnel Responsible for Radiological Health Programs.

(iv) One State respondent indicated that under its Administrative Procedure Act it is required to notify interested parties of rule changes and to hold public hearings to receive comments which can also be delivered in writing.

(v) A joint response from two professional groups indicated they were concerned with the rising cost of doing business with both the NRC and the Agreement States and therefore, were opposed to any effort that would effect further increases. They believed the information requests of the petition reflect the cost of doing business with the various Agreement States and that the petitioner should utilize its own resources in gathering the information necessary to become aware of a State's relevant requirements. One State respondent indicated that the petition would increase costs to State and Federal Governments and to those they regulate because Agreement States and the NRC obtain revenues from fees and/or general fund monies. Thus, the cost of promulgating proposed State regulations in the Federal Register will ultimately be born by all radioactive material licensees and the general public. Because this expenditure will only benefit a small number of service groups that distribute generally licensed devices, it would be more economical if these groups requested copies of the desired information from the States within which they plan to do business. A State respondent indicated that the cost to the petitioner for producing a periodic form letter and postage would be small compared to the added bureaucracy if the NRC was required to develop a program to gather the desired information from the Agreement States and publish it in the Federal Register.

(vi) Several State respondents expressed concern over the additional administrative and economic burden that would be imposed on the Agreement States because of proposed new procedural requirements in the petition. Furthermore, these proposed requirements may create conflict with existing State statutes concerning rulemaking time frames, or may further delay an already lengthy rulemaking process. One State respondent indicated that it was doubtful that their State General Assembly would consider an amendment to a State statute that only accommodates one agency.

The commenters favoring the petition did so on the following basis:

(i) One industry respondent indicated that some Agreement States maintain an effective communication program of notifying interested parties of proposed and completed regulatory actions in their States, but others may not. Thus, companies like the petitioner's must make a substantial effort to acquire the desired information. Another industry respondent indicated it had difficulty obtaining copies of current regulations and any information on proposed

regulatory changes from some Agreement States.

(ii) An industry respondent indicated that early notification of potential revisions in Agreement State regulations would alert the NRC to possible rule inconsistencies and non-compatibility problems before changes become final, which would facilitate a greater awareness and understanding of the changes.

(iii) A public interest group expressed concern that the difficulties encountered by the petitioner may stem from State government favoritism toward in-State businesses to the detriment of out-of-State entities who are affected by the State's actions.

(iv) One respondent, a private consultant, indicated that without a mechanism for learning about proposed and completed regulatory actions in Agreement States, it was too time consuming and expensive for individuals to obtain this information.

(v) One industry respondent indicated that although there were a number of ways interested parties could obtain the desired regulatory information requested by the petition, they did not assume that these parties would be informed. In addition, it is believed there is a lack of uniformity and consistency among the Agreement States in how interested parties are notified of proposed and completed regulations. This respondent, while supporting the petition, indicated he preferred a simpler solution (unspecified) for providing uniform and timely information to parties interested in Agreement State regulations. He also believed the Organization of Agreement States was in the best position to develop such a solution.

Reasons for Denial

The NRC reviewed the amendments proposed in the petition, considered the comments received, and concluded that the arguments made by the petitioner are not sufficient to warrant amending 10 CFR parts 2 and 150. The reasons for denial are as follows:

1. The petition does not discuss any situation in which the public health and safety is an issue or any apparent safety benefit that will be derived by collecting and disseminating the information requested by the petition. Thus, the NRC foresees no basis for the additional administrative burden or increased costs to collect and disseminate this information in the manner suggested by the petition.

2. The process of collecting and disseminating the information pursuant to the petition would place an administrative and economic burden on both the NRC and Agreement States. The petitioner did not address the costs for developing the information system that would be necessary to implement the proposed amendments in the petition or consider the reporting burdens that would be imposed on both the Agreement States and the NRC to support the operation of such a system. The petitioner did not consider the costs associated with system operational problems, the need for additional staff resources at both the NRC and Agreement States, the need for administrative procedures for tracking information and documentation system instructions, and the costs for periodically publishing notices of the information under NRC auspices in the Federal Register.

3. The information sought by the petitioner is already available through other mechanisms. Based on a review of the public comments, several means presently exist by which interested parties who are not licensed in a particular Agreement State can access information on proposed or completed regulation changes in a particular Agreement State. As previously mentioned, several Agreement State respondents indicated that, as required by State statute, they maintain state registers in which proposed and completed regulatory actions of that State are published. The information on the State Registers is available to interested parties on a subscription basis, by mail, or by telephone.

The Conference of Radiation Control Program Directors, Inc., also maintains a directory that includes the name, address, and telephone number of Agreement State public officials responsible for radiological health programs. By making a telephone call to the appropriate Agreement State public official, a requester can obtain information about the latest proposed and completed regulatory actions in that State. In addition, the NRC maintains a list of Agreement State contacts that includes telephone and facsimile numbers and addresses. Interested parties can call or write to the NRC to obtain this information. The NRC also sponsors open meetings twice a year to discuss Agreement State and NRC regulatory matters.

Because of the potential administrative burden and added costs associated with the development and operation of an information system to support the requests in the petition without an accompanying health and safety benefit, and because alternative means are currently available to the petitioner and interested parties to acquire the desired information about Agreement State regulatory activities, the petition for rulemaking filed by the Measurex Corporation (PRM–150–3) is denied.

Dated at Rockville, MD, this 26th day of December 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Executive Director for Operations.

[FR Doc. 96–965 Filed 1–23–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASW–15]

Proposed Revision of Class E Airspace; Gainesville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Gainesville, TX. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 at Gainesville Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Gainesville Municipal Airport, Gainesville, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–15, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort

Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–15.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Gainesville Municipal Airport, Gainesville, TX. A new GPS SIAP to RWY 17 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 17 at Gainesville, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Gainesville, TX [Revised]

Gainesville Municipal Airport, TX
(Lat. 33°38′57″ N., long. 97°11′43″ W.)
Gainesville RBN
(Lat. 33°42′24″ N., long. 99°10′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Gainesville Municipal Airport and within 1.5 miles each side of the 003° bearing from the Gainesville RBN extending from the 6.6-mile radius to 9.3 miles north of the airport and within 1 mile each side of the 001° bearing from the airport from the 6.6-mile radius to 10.4 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–993 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–16]

Proposed Establishment of Class E Airspace; Reserve, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Saint John The Baptist Parish Airport, Reserve, LA. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Reserve, LA.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–16, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday

through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–16.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL at Saint John The Baptist Parish Airport, Reserve, LA. The development of a GPS SIAP to RWY 17 has made this proposal necessary. Designated airspace extending upward from 700 from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 17 at Saint John The Baptist Parish Airport, Reserve, LA.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Reserve, LA [New]

Saint John The Baptist Parish Airport, LA
(Lat. 30°05′33″ N., long. 090°34′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of Saint John The Baptist Airport.

* * * * *

Issued in Fort Worth, TX, on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–994 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–13]

Proposed Revision to Class E Airspace; Santa Fe, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Santa Fe, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 28 at Santa Fe County Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 28 at Santa Fe, NM.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–13, Fort Worth, TX

76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–13.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Santa Fe County Municipal Airport, Santa Fe, NM. A new GPS SIAP to RWY 28 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 28.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Santa Fe, NM [Revised]

Santa Fe County Municipal Airport, NM
(Lat. 35°37′01″ N, long. 106°05′22″ W)
Santa Fe VORTAC
(Lat. 35°32′26″ N, long. 106°03′54″ W)

That airspace extending upward from 700 feet above the surface within a 9.7-mile radius of Santa Fe County Municipal Airport, and within 8 miles east and 4 miles west of the 165° radial of the Santa Fe VORTAC extending from the 9.7-mile radius to 20.8 miles southeast of the airport and within 2 miles each side of the 112° radial from the Santa Fe County Municipal Airport extending from the 9.7-mile radius to 10.4 miles east of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–995 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–12]

Proposed Establishment of Class E Airspace; Tallulah, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Vicksburg/Tallulah Regional Airport, Tallulah, LA. The development of a Global Positioning

System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 18 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 18 at Vicksburg/ Tallulah Regional Airport, Tallulah, LA.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–12, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–12.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Vicksburg/Tallulah Regional Airport, Tallulah, LA. The development of a GPS SIAP to RWY 18 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 18 at Vicksburg/Tallulah Regional Airport, Tallulah, LA. The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Tallulah, LA [New]

Vicksburg/Tallulah Regional Airport, LA
(Lat. 32°21′06″ N., long. 091°01′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Vicksburg/Tallulah Regional Airport excluding that airspace which overlies the Vicksburg, MS Class E area.

* * * * *

Issued in Fort Worth, TX on Jan. 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–996 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–20]

Proposed Revision to Class E Airspace; Victoria, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise Class E airspace extending upward from 700 feet above ground level (AGL) at Victoria, TX. The development of an Instrument Landing System (ILS) standard instrument approach procedure (SIAP) to Runway (RWY) 12 Left (L) has resulted in revision of the Class E airspace to contain IFR flight operations at the airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the ILS SIAP to RWY 12L at Victoria Regional Airport, Victoria, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–20, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–20.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Victoria Regional Airport, Victoria, TX. Development of an ILS SIAP to RWY 12L at the airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the ILS SIAP to RWY 12L at Victoria, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Victoria, TX [Revised]

Victoria, Victoria Regional Airport, TX
(Lat. 28°51′09″ N., long. 96°55′07″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Victoria Regional Airport, and within 1.9 miles each side of the 312° bearing from the airport extending from the 7.1-mile radius to 12.8 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–997 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–19]

Proposed Establishment of Class E Airspace, Midlothian-Waxahachie, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Midlothian-Waxahachie Municipal Airport, Midlothian-Waxahachie, TX. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 36 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace to contain Instrument Flight Rules (IFR) operations at Midlothian-Waxahachie Municipal Airport, Midlothian-Waxahachie, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–19, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–19.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL, a transition area, at Midlothian-Waxahachie Municipal Airport, Midlothian-Waxahachie, TX. The development of a GPS RWY 36 SIAP has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground (AGL) is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 36 SIAP at Midlothian-Waxahachie, TX. Additionally, the intended effect of this proposal is to provide adequate Class E airspace to contain departing IFR operations upward from 700 feet AGL at Midlothian-Waxahachie, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 at FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Midlothian-Waxahachie, TX
[NEW]
Midlothian-Waxahachie, Midlothian-Waxahachie Municipal Airport, TX
(lat. 32°27′22″ N., long. 96°54′45″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Midlothian-Waxahachie Municipal Airport, excluding that airspace which overlies the Dallas-Fort Worth, TX Class E area.

* * * * *

Issued in Fort Worth, TX on Jan 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–998 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–17]

Proposed Amendment to Class E Airspace; Guthrie, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Class E airspace extending upward from 700 feet above ground level (AGL) at Guthrie, TX. New Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) Area Navigation (Random Navigation) (RNAV) standard instrument approach procedures (SIAP's) to Runaways (RWY's) 1 and 19 at 6666 Ranch Airport, Guthrie, TX, have made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR/DME RNAV SIAP's to RWY's 1 and 19 at Guthrie, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–17, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 pm, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–17.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM.Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at 6666 Ranch Airport, Guthrie, TX. New VOR/DME RNAV SIAP's to RWY's 1 and 19 have made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's to Guthrie, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Guthrie, TX [Revised]

Guthrie, 6666 Ranch Airport, TX
(Lat. 33°38′28″ N, long. 100°20′51″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of 6666 Ranch Airport and within 2 miles each side of the 196° bearing from the airport extending from the 6.7-mile radius to 10.4 miles south of the airport, and within 3.7 miles each side of the 003° bearing from the airport extending from the 6.7-mile radius to 10.4 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1000 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–14]

Proposed Revision of Class E Airspace; Hondo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Hondo, TX. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 at Hondo Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Hondo Municipal Airport, Hondo, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–14, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–14.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Hondo Municipal Airport, Hondo, TX. A new GPS SIAP to RWY 17 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 17 at Hondo, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Hondo, TX [Revised]

Hondo Municipal Airport, TX
(Lat. 29°21′35″ N., long 99°10′36″ W.)
Hondo RBN
(Lat. 29°22′24″ N., long 99°10′19″ W.)
Hondo VOR
(Lat. 29°21′16″ N., long 99°10′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Hondo Municipal Airport and within 8 miles west and 4 miles east of the 180° bearing from the Hondo RBN extending from the airport to 16 miles south of the RBN and within 2.3 miles each side of the 352° radial of the Hondo VOR extending from the 6.7-mile radius to 6.9 miles north of the airport and within 2 miles each side of the 360° radial of the airport extending from the 6.7-mile radius to 10.5 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1001 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–35]

Proposed Establishment of Class E Airspace; Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on March 8, 1994 (59 FR 10760) which proposed to establish Class E airspace at Osceola, AR. The proposal was to establish controlled airspace extending upward from 700 feet above the ground (AGL). This airspace was needed to contain aircraft executing a new Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) to Runway (RWY) 19 at Osceola. The description of the proposed airspace in the NPRM was incorrectly identified as Class E surface airspace and incorrectly described the airspace necessary to contain aircraft executing the SIAP. After publication of that NPRM, a second NPRM was published with the proposed Class E airspace correctly designated, but this second NPRM was published under the same docket number. Accordingly, to avoid confusion, the first proposal published in the Federal Register on March 8, 1994 (59 FR 10760) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 217–5593.

SUPPLEMENTARY INFORMATION: On March 3, 1994, an NPRM was published in the Federal Register to establish Class E airspace at Osceola, AR. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB SIAP RWY 19 at Osceola, AR. This NPRM incorrectly proposed establishing Class E surface area airspace and incorrectly described the airspace. A second NPRM using the same docket number was published in the Federal Register correctly proposing Class E airspace upward from 700 feet above ground level (AGL) and correctly describing airspace dimensions required to contain Instrument Flight Rules (IFR) operations at Osceola, AR. Therefore, the proposed rule published as Docket No. 92–ASW–35 on March 8, 1995 (59 FR 10760) is duplicative, incorrect and unnecessary; and is therefore withdrawn. Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 92–ASW–35, as published in the Federal Register on March 8, 1994 (59 FR 10760), is withdrawn.

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1002 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–26]

Proposed Revision of Class E Airspace; Carlsbad, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Carlsbad, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 21 at Cavern City Air Terminal has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 21 at Cavern City Air Terminal, Carlsbad, NM.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–26, Fort Worth, TX 76193–0530 95–ASW–26. The official docket may be examined in the Office of Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Forth Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–26.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Cavern City Air Terminal, Carlsbad, NM. A new GPS SIAP to RWY 21 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 21 at Carlsbad, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Carlsbad, NM [Revised]

Carlsbad, Cavern City Air Terminal, NM

(Lat. 32°20′15″ N., long 104°15′48″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4 mile radius of Cavern City Air Terminal and within 1.4 miles each side of the Cavern City Air Terminal Localizer southwest course extending from the 7.4-mile radius to 9.4 miles southwest of the airport and within 1.8 miles each side of the 044° bearing from the airport from the 7.4-mile radius to 8.7 miles northeast of the airport.

* * * * *

Issued in Forth Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1003 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–25]

Proposed Revision of Class E Airspace; Belen, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Belen, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 21 at Alexander Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 21 at Alexander Municipal Airport, Belen, NM.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–25, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation

Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–25.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Alexander Municipal Airport, Belen, NM. A new GPS SIAP to RWY 21 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 21 at Belen, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface or the earth.

* * * * *

ASW NM E5 Belen, NM [Revised]

Belen, Alexander Municipal Airport, NM
(Lat. 34°38′43″ N., long. 106°50′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Alexander Municipal Airport and within 1.6 miles each side of the 034° bearing from the airport extending from the 6.6-mile radius to 7.8 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX on Jan. 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1004 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–24]

Proposed Revision of Class E Airspace; Mena, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Mena, AR. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 at Mena Intermountain Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 17 at Mena Intermountain Municipal Airport, Mena, AR.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–24, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest

Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–24.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A reporting summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Mena Intermountain Municipal Airport, Mena, AR. A new GPS SIAP to RWY 17 has made this proposal to amend the controlled airspace necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 17 at Mena, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR Mena, AR [Revised]

Mena Intermountain Municipal Airport, AR
(Lat. 34°32′55″ N., long. 94°12′29″ W.)
Mena RBN
(Lat. 34°32′55″ N., long. 94°12′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Mena Intermountain Municipal Airport and within 8 miles south and 4 miles north of the 086° radial from the Mena RBN extending from the 6.9-mile radius to 16 miles east of the RBN and within 2 miles each side of the 001° bearing from the airport extending from the 6.9-mile radius to 12.6 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on Jan. 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1005 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–23]

Proposed Establishment of Class E Airspace; Galliano, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at South La Fourche Airport, Galliano, LA. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 18 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 18 at South La Fourche Airport, Galliano, LA.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–23, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–23.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGL, at South La Fourche Airport, Galliano, LA. The development of a GPS SIAP to RWY 18 has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 18 at South La Fourche Airport, Galliano, LA.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amemdment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.0C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Galliano, LA [New]

Galliano, South La Fourche Airport, LA
(Lat. 29°26′41″ N., long. 090°15′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of South La Fourche Airport.

* * * * *

Issued in Fort Worth, TX on Jan. 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1006 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–22]

Proposed Revision of Class E Airspace; Marshall, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Marshall, TX. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 33 at Harrison County Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 33 at Harrison County Airport, Marshall, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–22, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–22.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Harrison County Airport, Marshall, TX. A new GPS SIAP to RWY 33 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 33 at Harrison County Airport, Marshall, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Marshall, TX [Revised]

Marshall, Harrison County Airport, TX
(Lat. 32°31′19″ N., long. 94°18′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Harrison County Airport and within 1.8 miles each side of the 157° bearing from the airport extending from the 6.6-mile radius to 8.6 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1007 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–21]

Proposed Establishment of Class E Airspace; Livingston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Livingston Municipal Airport, Livingston, TX. The development of a Global Positioning

System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 30 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 30 at Livingston Municipal Airport, Livingston, TX.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–21, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–21.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 700 feet AGI at Livingston Municipal Airport, Livingston, TX. The development of a GPS SIAP to RWY 30 has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 30 at Livingston Municipal Airport, Livingston, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Livingston, TX [New]

Livingston, Livingston Municipal Airport, TX (Lat. 30°41′9″ N., long. 095°01′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Livingston Municipal Airport.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–1008 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASW–18]

Proposed Revision to Class E Airspace, Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace extending upward from 700 feet above ground level (AGL) at Farmington, NM. A new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 25 at four Corners Regional Airport, Farmington, NM, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 25 at Farmington, NM.

DATES: Comments must be received on or before February 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 95–ASW–18, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 95–ASW–18.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Four Corners Regional Airport, Farmington, NM. A new GPS SIAP to RWY 25 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 25 at Farmington, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; 92) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Farmington, NM [Revised]

Farmington, Four Corners Regional Airport, NM
(Lat. 36°44′31″ N, long. 108°13′47″ W)
Farmington VORTAC
(Lat. 36°44′54″ N, long. 108°05′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Four Corners Regional Airport, and within 1.7 each side of the 088° bearing from the airport extending from the 6.7-mile radius to 9-miles east of the airport, and within 1.6 miles each side of the 266° radial of the Farmington VORTAC extending from the 6.7-mile radius to 10.7 miles west of the airport; and that airspace extending from 1,200 feet above the surface bounded by a line extending from lat. 37°04′00″ N, long. 108°27′03″ W; thence clockwise within a 25.5-mile radius of the Farmington VORTAC to lat. 37°00′00″ N, long. 107°40′18″ W; to lat. 37°00′00″ N, long. 107°12′58″ W; thence clockwise within a 45.1-mile radius of the Farmington VORTAC to point of beginning;

excluding that airspace within the Durango, CO, Class E airspace area, that airspace within and underlying the Crownpoint, NM, Class E airspace area.

* * * * *

Issued in Fort Worth, TX on January 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–999 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 118

RIN 1515–AB83

Centralized Examination Stations; Immediate Suspension or Permanent Revocation As Operator Upon Indictment for Any Felony

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations primarily to enable Customs port directors to immediately suspend operations at a Centralized Examination Station (CES) whenever the operator, entity, or other person exercising substantial ownership or control over the operator, is indicted for, convicted of, or has committed acts which would constitute any felony. This document also proposes to make it more specific that a CES operator's failure to follow the terms of the CES written agreement constitutes a ground for proposed permanent revocation of the CES and cancellation of the written agreement to operate the facility. This action is taken in order to protect the public interest and to promote public confidence concerning the integrity of the CES program.

DATES: Comments must be received on or before March 25, 1996.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the U.S. Customs Service, Attn: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Field Operations, Trade Compliance (202) 927–1167.

SUPPLEMENTARY INFORMATION:

Background

In T.D. 93–6 (58 FR 5596) Customs amended the Customs Regulations (19 CFR Ch. I) to create a new part 118 that set forth the regulatory framework for the establishment, operation, and termination of Centralized Examination Stations (CESs). A CES is a privately-operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. Regarding the termination of CESs, Customs stated that immediate revocation and cancellation for a criminal act should not be limited to cases involving an actual conviction or admission, and that the only criminal offenses which should result in an immediate revocation and cancellation would be those which involved theft, smuggling, or a theft-connected crime.

On further consideration of the issue of when revocation, cancellation, or suspension of an entity selected to be a CES operator should occur, Customs now believes that if a CES operator, an officer of a corporation which operates a CES, or a person the local ''port director'' (a new designation reflecting Customs pending field reorganization, the subject of a separate document) determines exercises substantial ownership or control over such operator or corporation is charged with any conduct which is proscribed as criminal, the character and integrity of the particular CES operation becomes questionable and consideration is warranted by the local port director as to whether the operations of the CES facility should be immediately suspended for a temporary period of time, i.e., a period commensurate with the seriousness of the crime charged, pending further investigation or outside adjudication of facts and/or the institution of permanent revocation and cancellation proceedings.

This action is being proposed in order to enhance port directors' ability to protect the public interest and to promote public confidence concerning the integrity of the CES program. Because the CES program centralizes at a particular location several otherwise disparate processes, including cartage, devanning, Customs inspection, sampling, reloading, and returning merchandise to the stream of commerce, and because the number of CES operators is limited (see, T.D. 93–6, 58 FR 5596, 5597 (January 22, 1993), the discussion of comments received concerning the final CES rule), Customs officers must have authority to ensure thorough confidence in the integrity of CES operators, employees, and premises. Therefore, this proposed rulemaking would provide port directors with additional discretion to decide whether, on a case-by-case basis, particular circumstances and risks involving the listed offenses warrant immediate suspension, proposed revocation and cancellation, both, or neither. This proposal is intended to provide Customs greater flexibility to address the varying situations with appropriate measures reasonably calculated to protect the public interest and to promote public confidence in the CES program.

Accordingly, Customs proposes to amend § 118.21, which provides for the revocation of selection and cancellation of the written agreement to operate a CES. Paragraph (a) will be revised to provide for the immediate suspension of a CES operator's or entity's selection and the written agreement to operate the CES if the local port director finds that (1) the selection and written agreement were obtained through fraud or the misstatement of a material fact; or (2) the CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must at least have probable cause to believe the proscribed acts occurred. When CES operations are suspended or revoked and cancelled by Customs, it will be the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

Paragraph (b) is proposed to be amended by adding a new subparagraph (6) which makes the above-referenced conduct a separate ground for the port director to pursue permanent revocation and cancellation procedures, and revising subparagraph (1) to make more specific that failure to comply with the responsibilities of a CES operator also constitutes a ground for proposed revocation and cancellation.

The circumstance of a change in employment status as not precluding adverse action, formerly provided for under paragraph (a), is made into a new paragraph (c) to make it clear that this consideration is applicable equally to actions regarding immediate suspension and permanent revocation.

Additional Changes to the Regulations

Because of the proposed change to § 118.21 discussed above, conforming changes to other referencing provisions in part 118 must also be made. The following changes are noted in this regard:

Section 118.0

The second sentence of the scope section to part 118 (§ 118.0) is revised to reference the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES for the type conduct specified above.

Section 118.22

Section 118.22 is proposed to be revised to reference the port director's responsibility to provide written notice to the CES operator or entity when the decision to immediately suspend operations has been made.

Section 118.23

Section 118.23 is proposed to be revised to reference the CES operator or entity's right to appeal the port director's decision to immediately suspend CES operations to the Assistant Commissioner of the Office of Field Operations (another new designation reflecting Customs pending field reorganization) or his designee. A sentence is added to make it clear that once a suspension or revocation action takes effect, the CES operator must cease CES operations. Further, where the port director follows an immediate suspension action with proposed permanent revocation and cancellation proceedings, the temporary suspension of CES operations remains in effect during the appeal process.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, as the current number of centralized examination station operators is small, *i.e.*, less than 200. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as defined in E.O. 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, U.S. Customs Service.

However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 118

Administrative practice and procedure, Customs duties and inspection, Examination stations, Imports, Licensing, Reporting and recordkeeping requirements.

Proposed Amendment

For the reasons stated above, it is proposed to amend part 118, Customs Regulations (19 CFR part 118), as set forth below:

PART 118—CENTRALIZED EXAMINATION STATIONS

1. The authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

2. In § 118.0, the second sentence is revised to read as follows:

§ 118.0 Scope

* * * It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the written agreement to operate a CES facility, the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES or to propose the permanent revocation of a CES operator's or entity's selection and cancellation of the written agreement for specified conduct, and the appeal procedures to challenge an immediate suspension or proposed revocation and cancellation action. * * *.

3. In § 118.21:

(a) The heading is revised and the introductory text is republished;

(b) Paragraph (a) is revised;

(c) Paragraph (b)(1) is amended by adding the words ''to comply with any of'' before the words ''the provisions of'';

(d) A new paragraph (b)(6) is added; and

(e) A new paragraph (c) is added.

The revisions and additions to read as follows:

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension.* The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to § 118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must at least have probable cause to believe the proscribed acts occurred.

(b) * * *

(6) The CES operator, an officer of a corporation which is a CES operator, or a person the port director determines to exercise substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this subparagraph, the suspension of CES activities remains in effect through the appeal procedures provided under § 118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to indictment or conviction or after committing any acts which would constitute the culpable behavior described under paragraph (a) of this section, will not preclude application of this section, but may be taken into account by the port director in exercising discretion to take adverse action. If the person whose employment status changed remains in a substantial ownership, control, or beneficial relationship with the CES operator, this

factor will also be considered in exercising discretion under this section.

4. Section 118.22 revised to read as follows:

§ 118.22 Notice of immediate suspension or proposed revocation and cancellation action.

Adverse action pursuant to the provisions of § 118.21(a) or (b) is initiated when the port director serves written notice on the operator or entity selected to operate the CES. The notice shall be in the form of a statement specifically setting forth the grounds for the adverse action and shall inform the operator of the appeal procedures under § 118.23 of this part.

5. Section 118.23 revised to read as follows:

§ 118.23 Appeal to the Assistant Commissioner; procedure; status of CES operations.

(a) *Appeal to the Assistant Commissioner.* Appeal of a port director's decision under § 118.21(a) or (b) must be taken to the Assistant Commissioner, Office of Field Operations, within 10 calendar days of receipt of the written notice of the adverse action. The appeal shall be filed in duplicate and shall set forth the CES operator's or entity's responses to the grounds specified by the port director in his written notice letter for the adverse action initiated. The Assistant Commissioner, Office of Field Operations, or his designee, shall render a written decision to the CES operator or entity, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal, unless the period for decision is extended with due notification to the CES operator or entity.

(b) *Status of CES operations during appeal.* During this appeal period, an immediate suspension of a CES operator's or entity's selection and written agreement pursuant to § 118.21(a) of this part shall remain in effect. A proposed revocation of a CES operator's or entity's selection and cancellation of the written agreement pursuant to § 118.21(b)(1)-(5) of this part shall not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the operator.

(c) *Effect of suspension or revocation.* Once a suspension or revocation action takes effect, the CES operator must cease CES operations. However, when CES operations are suspended or revoked and cancelled by Customs, it is the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

Approved: December 13, 1995.

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–1048 Filed 1–23–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

Proposed Regulation Relating to Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of rescheduling of date for public hearing.

SUMMARY: This document reschedules the date for a public hearing on the proposed rule under Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (the Act), relating to revision of the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Act. The proposed rule was set forth in a notice of proposed rulemaking published in the Federal Register at 60 FR 66036 (December 20, 1995).

DATES: The public hearing on this proposed rule is rescheduled to Thursday, February 22, 1996, and, if necessary based on the volume of requests by the public to testify, to Friday, February 23, 1996. The hearing will begin at 10:00 a.m. on both days.

ADDRESSES: Written requests to present public testimony concerning the proposed rule should be submitted by February 14, 1996 to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Participant Contribution Regulation. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave., N.W., Washington, DC 20210. The rescheduled hearing on the proposed regulation will be held in Room N–3437 A and B, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219–7461) or William W. Taylor, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Rm N–4611, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219–9141). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On December 20, 1995, the Department of Labor (the Department) published a notice of proposed rulemaking in the Federal Register (60 FR 66036) which would revise the definition of when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Act. In that notice the Department scheduled a public hearing with respect to the proposal, to be held on January 24 and January 25, 1996, and invited interested persons to submit written requests to testify at the hearing.

The Department has received requests from some members of the public for additional time for preparation of testimony on the proposed rule, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice reschedules the public hearing on the proposed rule to Thursday, February 22, 1996 and, if necessary, to Friday, February 23, 1996. Requests to present public testimony should be submitted by February 14. Unless otherwise advised, the Department will assume that persons who have already submitted written requests to testify at the January 24–25 hearing will wish to testify at the hearing rescheduled for February 22–23.

The December 20, 1995 Federal Register notice also stated that written comments concerning the proposed regulation must be received by February 5, 1996. The Department has determined that the February 5 deadline for submission of written comments will continue to apply, notwithstanding the rescheduling of the public hearing.

Notice of Rescheduling of Date for Public Hearing

Notice is hereby given that the public hearing for the proposed rule (published at 60 FR 66036, December 20, 1995) relating to revision of the definition of

when certain monies which a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Act is rescheduled to Thursday, February 22, 1996 and, if necessary, to Friday, February 23, 1996.

Signed at Washington, DC, this 19th day of January 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–1136 Filed 1–23–96; 8:45 am]

BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE24–1–7156b; FRL–5401–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware Ozone Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware for the purpose of establishing 1990 ozone base year emission inventories for the Delaware ozone nonattainment areas. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 23, 1996.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Delaware Ozone Emission Inventory) which is located in the Rules and Regulations section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–921 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA25–1; A–1–FRL–5402–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove or, in the alternative, to conditionally approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision, consisting of two parts, establishes a program for prevention of significant deterioration of air quality (PSD). The first part includes Virginia's regulations and procedures for a PSD program. The second part includes amendments to those regulations submitted as part of the SIP revision. The intended effect of this action is to propose disapproval or, in the alternative, approval of Virginia's request to amend its SIP to satisfy federal new source review requirements for the preconstruction permitting of new sources and modifications in attainment and unclassifiable areas, on the condition that deficiencies in the state program are corrected and submitted within one year of approval. This action is being taken under the Clean Air Act (CAA).

DATES: Comments must be received on or before February 23, 1996. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and at the Virginia Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia, 23240.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue (215) 597–2923, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: In a series of submittals, the Virginia Department of Air Pollution Control (DAPC), now known as the Department of Environmental Quality (VDEQ), submitted the elements for a revision to its SIP that would establish a program for the prevention of significant deterioration of air quality (PSD) in the review and permitting of new major sources and major modifications (the PSD program). On December 17 and 18, 1992, the VDEQ transmitted a request for the approval of the Commonwealth's regulations for PSD and its ''Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program (AQP–11)'', a non-regulatory procedures document, as a revision to the Virginia State Implementation Plan. Specifically, the December 17, 1992 submittal included AQP–11, and the December 18, 1992 submittal consisted of Virginia Regulation for the Control and Abatement of Air Pollution, § 120–08–02 Permits—Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas. On February 3, 1993, DAPC sent a Summary of Public Testimony and Response Thereto in order to satisfy federal SIP revision completeness criteria. On February 18, 1993 DAPC sent Virginia Regulations Appendix L, also to be included in the SIP revision. On August 16, 1993 the VDEQ submitted a supplementary revision to § 120–01–01 and 120–08–02 to correct deficiencies in its earlier PSD regulations.

If Virginia's PSD regulations are disapproved by EPA the current federal implementation plan (FIP) for PSD in Virginia at 40 CFR 52.2451 and the delegation agreement between EPA and Virginia will continue to be in effect. If Virginia's PSD regulations are approved by EPA, the state will have authority to implement and enforce the PSD program through its SIP, the current FIP at 40 CFR 52.2451 will be withdrawn, and the delegation agreement between EPA and Virginia will be terminated.

Background

On June 19, 1978, EPA promulgated the PSD regulations of 40 CFR 52.21 (b) through (w) into the Virginia SIP at 40 CFR 52.2451 and federally implemented the PSD program in Virginia. As of June 3, 1981, authority for implementation of the Federal PSD program was delegated to the Commonwealth of Virginia, and Virginia began issuing and enforcing Federal PSD permits. On September 20, 1991, Virginia was granted the authority to implement and enforce the nitrogen dioxide (NO_2) increment portion of the federal PSD program.

On June 3, 1993 (58 FR 31636), EPA promulgated rules which revised the PSD requirement for particulate matter (PM). The revised increments for PM restrict increases in ambient concentrations of PM–10, which is defined as particles with an aerodynamic diameter of less than or equal to 10 micrometers. The revisions affect the regulations of 40 CFR parts 51 and 52 which specify the increments for PM, and became effective on June 3, 1994. On July 20, 1993 (58 FR 38822), EPA promulgated rules which revised the ''Guidelines for Air Quality Models'' by adding a 1993 supplement to the Guidelines. The revisions affect the regulations of 40 CFR parts 51 and 52 which specify the version of the guidelines, and became effective on August 19, 1993. Virginia must still revise its regulations to include the PM–10 increment and modeling guideline provisions and submit them as a revision to the SIP. However, EPA does not believe that it should delay the processing of the SIP revisions relating to PSD which Virginia has already submitted because of the need for additional revisions pertaining to PM–10 and modelling guidelines.

EPA proposes to retain authority, under 40 CFR 52.21, for implementing and enforcing all Virginia PSD permits, or portions thereof, involving requirements related to PM–10. EPA also proposes to keep its current delegation of authority to Virginia to issue PSD permits in effect insofar, and only insofar, as PSD requirements pertaining to PM–10 are concerned. On October 16, 1995, Virginia published a ''Notice of Intended Regulatory Revision UU Concerning Prevention of Significant Deterioration'' and notified EPA of its intent. The purpose of the proposed action is to amend Virginia's PSD regulation to make it conform with federal PSD PM–10 increment and modeling guideline provisions. EPA solicits comments on this issue.

Summary and Analysis of Virginia's Submittal

In the first part of the Commonwealth's submittal, the Commonwealth requested that the ''Virginia Regulations for the Control and Abatement of Air Pollution for Prevention of Significant Deterioration, § 120–08–02 and Appendix L'', and ''Air Quality Program Policies and Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program (AQP–11)'' be added to the Virginia State Implementation Plan.

Virginia's submittal included four commitments. The first commitment, to adopt certain regulatory changes and submit them for EPA approval, is addressed in this notice. The other three commitments were: the state will ''transmit to the Regional Administrator or his designee a copy of each permit application relating to a major stationary source or major modification, and provide notice to the Regional Administrator of every action related to the consideration of such permit,'' ''make a positive determination of completeness of an application and will notify the applicant whether or not the application is complete,'' and ''perform a periodic assessment'' of the PSD SIP.

The second part of Virginia's submittal, consisting of amendments to Virginia Regulation § 120–08–02, Permits for Major Stationary Sources and Major Modifications in Prevention of Significant Deterioration Areas, and Appendix L, Prevention of Significant Deterioration Areas, was submitted on August 16, 1993. These corrections to the PSD regulations included certain elements necessary for federal approval of the state PSD program. The August 16, 1993 part of the submittal also included a revision to general definitions for Class I, II, and III areas, at § 120–01–02, Terms Defined.

The provisions of Virginia Regulation § 120–08–02 apply to the construction of any major source or major modification in areas that are designated attainment or unclassifiable for the National Ambient Air Quality Standards (NAAQS). Specific applicable geographic locations in Virginia are designated in Appendix L of the regulations. Through the definitions of major source and major modification equivalent to federal definitions, Virginia's regulations capture the correct universe of sources for the PSD program. Each new source or modification is required to apply Best Available Control Technology (BACT) and demonstrate that the proposed source or modification would not cause or contribute to air pollution in violation of a NAAQS in any Air Quality Control Region or an applicable maximum allowable increase over the baseline concentration (increment) in any area.

Regulation 120–01–02, Terms Defined, was included in the August 16, 1993 supplement to the submittal. The definitions of Class I, II, and III geographic locations in Virginia that are applicable to PSD are designated in Appendix L of the regulations and defined by locality for criteria and other pollutants. Appendix L classifies PSD areas, which include two federal Class I areas, James River Face Wilderness Area and Shenandoah National Park. Virginia has no Class III areas.

The procedures used to determine increment allocation, consumption and protection, established in Virginia's AQP–11, are consistent with federal regulations. Under Virginia's program, increment is allocated to permit applicants on a sequential basis at the time an application is determined to be complete. Increment consumption shall be calculated using the most recent representative meteorological data. Any PSD applicant shall be required to demonstrate through air quality modeling that emissions increases would not cause or contribute to any violation of allowable increments within a Class I area if: (1.) the applicant proposes to construct or modify within 100 kilometers of a Class I area, (2.) EPA believes a demonstration is necessary, even though the applicant will be constructing beyond 100 kilometers, or (3.) Virginia believes the change in question may appreciably affect increment consumption in the Class I area. Virginia's regulations also include the requirements of 40 CFR 51.166(p) for sources impacting federal class I areas. In § 120–08–02 and AQP–11, Virginia cites and will use EPA's Guideline on Air Quality Models and EPA guidance regarding ''Class I Area Significant Impact Levels and Modeling Class I Area Impacts'' for increment analysis and maintenance of the NAAQS. An inventory of emissions that consume Class I increment will be maintained by the Commonwealth. AQP–11 also outlines steps to prevent

increment violations and to respond to a Federal Land Manager who has determined that a proposed emissions increase would have an adverse impact on the air quality related values.

The PSD provisions of the CAA emphasize the importance of public participation in permitting decisions. See section 160(5) of the CAA. In addition, section 165(a)(2) of the CAA provides that no PSD permit shall be issued unless a ''public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impacts to the source, alternatives thereto, control technology requirements, and other appropriate considerations.'' See also section 40 CFR 51.166(q)(2)(v). Further, 40 CFR 51.166(a)(1) provides that ''[i]n accordance with the policy of section 101(b)(1) of the CAA and the purposes of section 160 of the CAA, each applicable State implementation plan shall contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality.'' See also section 161 of the CAA.

EPA interprets existing law and regulations to require an opportunity for state judicial review of PSD permit actions under approved PSD SIPs by permit applicants and affected members of the public in order to ensure an adequate and meaningful opportunity for public review and comment on all issues within the scope of the permitting decision, including environmental justice concerns and alternatives to the proposed source. The EPA believes that an opportunity for public review and comment, as provided in the statute and regulations, is seriously compromised where an affected member of the public is unable to obtain judicial review of an alleged failure of the state to abide by its PSD SIP permitting rules. Accordingly, all such persons, as well as the applicant, must be able to challenge PSD permitting actions in a judicial forum.

In Section 307(b) of the CAA, Congress expressly provided an opportunity for judicial review of PSD permitting decisions when EPA is the permitting authority. In a federal PSD program (PSD FIP) such as the one currently in effect in Virginia, any member of the public who has participated in the public comment process and meets the threshold standing requirements of Article III of the U.S. Constitution may petition for administrative review of the permit within 30 days of issuance and ultimately seek judicial review of the administrative disposition of the permit. There is no indication that Congress intended that citizens' rights would be diminished upon the EPA approval of a state's PSD program.

Similarly, Congress has provided citizens the ability to challenge the failure of a major source to obtain the PSD permit required under Part C of the CAA or the violation of such permit in Federal district court under the citizen suit provisions of section 304(a)(3), regardless of whether the permitting authority is the EPA or a State. The operative language of section 304(a)(3) could be read as equivalent to the federal New Source Review (NSR) enforcement provisions of sections 113(a)(5) and 167, as enabling challenges to both construction without any permit and construction without a permit that satisfies applicable NSR requirements. The EPA believes that the better view is that expressed in the legislative history of the 1977 Amendments, which directed citizen challenges to State court: ''[i]n order to challenge the legality of a permit which a State has actually issued, or proposes to issue, under [the PSD provisions of the CAA] however, a citizen must seek administrative remedies under the State permit consideration process, or judicial review of the permit in State court.'' Staff of the Subcommittee on Environmental Pollution of the Senate Committee on Environment and Public Works, 95th Congress, 1st Session, A Section-by-section Analysis of S. 252 and S. 253, Clean Air Act Amendments 36 (1977), reprinted in 5 Legislative History of the Clean Air Act Amendments of 1977 (1977 Legislative History) 3892 (1977). The EPA believes that Congress intended such opportunity for state judicial review of PSD permit actions to be available to permit applicants and at least those members of the public who can satisfy threshold standing requirements under Article III of the Constitution.

Currently, under the PSD FIP in effect in Virginia, a Virginia citizen can petition EPA to conduct an administrative review of a PSD permit issued by Virginia (under a delegation agreement with EPA) and seek judicial review of the final permitting action in federal court. In sharp contrast, section 10–1.1318(B) of the Code of Virginia extends the right to seek judicial review only to persons who have suffered an ''actual, threatened, or imminent injury * * *'' where ''such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *'' The Virginia statute, as well as Virginia case law, does not enable any member of the public who participated in the public comment process on a PSD permit and who meets the threshold standing requirements of Article III of the Constitution to obtain judicial review of the permit in the Commonwealth's court system.

The limited judicial review in Virginia thus does not meet the minimum requirements for standing for judicial review required for PSD SIP programs under the CAA and EPA's implementing regulations. Therefore, the EPA is proposing to disapprove Virginia's PSD submittal. The EPA solicits comment on this view, and, in the alternative, proposes to approve the submittal should EPA conclude that such judicial standing is not required for approval of a PSD SIP.

EPA has noted that some of Virginia's definitions do not conform with the Clean Air Act Amendments (CAAA) of 1990, although they do conform with federal regulations. EPA does not believe that this affects the decision-making process for this proposed rulemaking action. EPA is currently in the process of making changes to federal regulations at 40 CFR parts C and D to comply with the CAAA. When EPA promulgates changes to the PSD regulations, all states will be required to comply with the new federal regulations, either through SIP revisions or updated delegation agreements. Specific timetables for those changes will be included in the rulemaking notice.

EPA's review of this material indicates that, with the exception of the issue highlighted above, Virginia's regulations and procedures are sufficient to implement and enforce a PSD program. A more detailed evaluation of Virginia's regulations for PSD can be found, in this rulemaking's docket file, in a memorandum entitled ''Revision to the Commonwealth of Virginia Implementation Plan for Prevention of Significant Deterioration of Air Quality—Technical Support Document''. Copies of that document are available upon request from the EPA regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

If the Agency determines, after reviewing public comment on this issue, that Virginia's PSD program must provide access to judicial review on a PSD permit to any party who participates in the public comment process and who meets the threshold standing requirements of Article III of the U.S. Constitution, EPA will disapprove the SIP revision submitted

by Virginia. Alternatively, if the Agency determines, after reviewing public comment on this proposal, that provisions for judicial review are unnecessary, and that Virginia's PSD program, with the exception of the PM–10 and modeling guideline provisions, meets the requirements of the CAA applicable to state PSD Programs, EPA will conditionally approve the SIP revision. In order to correct the deficiencies, Virginia must amend the Virginia Regulations and AQP–11 to meet the current federal PSD requirements at 40 CFR part 51 by addressing the PM–10 and modeling guideline provisions. The program amendments must be submitted within one year of conditional approval. If Virginia fails to revise and submit the amendments within one year, the conditional approval will convert to a disapproval.

EPA is soliciting public comments on Virginia's SIP submittal, and, in particular, on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may submit written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

EPA is proposing to disapprove or, in the alternative, conditionally approve Virginia's request to revise the Commonwealth's SIP to include Virginia Regulation for the Control and Abatement of Air Pollution, § 120–08–02, permits for major sources and major modifications located in prevention of significant deterioration areas, and Appendix L, prevention of significant deterioration areas; and Air Quality Program Policies and Procedures for Implementation of Prevention of Significant Deterioration (PSD) of Air Quality Program, AQP–11. EPA is also proposing to disapprove or, in the alternative, conditionally approve supplementary revisions to § 120–01–02, § 120–08–02, and Appendix L. For conditional approval, Virginia must amend the program as specified above to satisfy the applicable federal PSD requirements of 40 CFR part 51, subpart I. With the exception of the PM–10 requirements, the Commonwealth will have authority to implement and enforce the PSD program through its SIP, and the delegation agreement will be terminated. EPA will retain authority under 40 CFR § 52.21, for implementing and enforcing all Virginia PSD permits, or portions thereof, involving requirements related to PM–10 until a SIP revision for PM–10 increments and modeling guidelines is approved. EPA's current delegation of authority to Virginia to issue PSD permits will remain in effect insofar, and only insofar, as PSD requirements pertaining to PM–10 are concerned. If Virginia later submits, as the October 16, 1995 ''Notice of Intended Regulatory Action'' indicates, and receives EPA approval of a revision to the Virginia PSD SIP incorporating the PM–10 increments and modeling provisions, the delegation agreement will be completely terminated.

If these revisions to the PSD requirements of the Virginia SIP are approved, EPA will continue to oversee implementation of this important program by reviewing and commenting on proposed permits with respect to applicable statutory and regulatory provisions and guidance. Also, EPA will implement and enforce the PM–10 increment standards until such time as EPA receives and approves a revision to the Virginia SIP incorporating those standards into the SIP. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Virginia's SIP, and may consider enforcement action under sections 113 and 167 of the Act to address the permit deficiency.

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

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

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposal or final that includes a Federal mandate that may result in estimated costs to state, local or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. This federal action disapproves, or conditionally approves pre-existing requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to disapprove, or in the alternative, to conditionally approve Virginia's SIP revision for the Prevention of Significant Deterioration Program will be based on whether it meets the applicable requirements of the Clean Air Act and of the EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 15, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–1051 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 152

[OPP–250112; FRL–4988–8]

Pesticide and Ground Water State Management Plan Regulation; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification to Secretary of Agriculture.

SUMMARY: Notice is given pursuant to section 25(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), that the Administrator of the Environmental Protection Agency (EPA) has forwarded to the Secretary of

Agriculture a proposed regulation issued under section 3(d) of FIFRA. The EPA is proposing to restrict the legal sale and use of five pesticides--atrazine, simazine, cyanazine, alachlor, and metolachlor through use of State Management Plans, because of their ground water contamination potential.

FOR FURTHER INFORMATION CONTACT: By mail: Arden Calvert, Policy and Special Projects Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 1119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7099, e-mail: calvert.arden@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, and if requested by the Secretary, the Administrator shall issue for publication in the Federal Register with the proposed regulation, the comments of the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the Federal Register anytime after the 30–day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: November 29, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–880 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3889, 2E4113, and 5E4538/P639; FRL–4990–6]

RIN 2070–AC18

Chlorothalonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for combined residues of the fungicide chlorothalonil and its metabolite in or on the raw agricultural commodities blueberries, filberts, and mushrooms. The proposed regulation to establish maximum permissible levels for residues of the fungicide was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4) pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Comments, identified by the document control number [PP 0E3889, 2E4113, and 5E4538/P639], must be received on or before February 23, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 0E3889, 2E4113, and 5E4538/P639]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 0E3889, 2E4113, and 5E4538 to EPA on behalf of the named Agricultural Experiment Stations. These petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.275 by establishing tolerances for combined residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on certain raw agricultural commodities, as follows:

1. *PP 0E3889*. Petition submitted on behalf of the Agricultural Experiment Stations of Florida, Georgia, Kentucky, Louisiana, Michigan, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Washington proposing a tolerance for blueberries at 1.0 part per million (ppm).

2. *PP 2E4113*. Petition submitted on behalf of the Oregon Agricultural Experiment Station proposing a tolerance for filberts at 0.1 ppm. The petitioner proposed that use of chlorothalonil on filberts be limited to Oregon based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

3. *PP 5E4538*. Petition submitted on behalf of the Pennsylvania Agricultural Experiment Station proposing a tolerance for mushrooms at 1.0 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the

proposed tolerances include the following data:

1. A 3-month feeding study in rats fed diets containing 175 milligrams (mg)/kilogram (kg)/day with gastric and renal lesions in male rats.

2. A 2-year feeding study in dogs fed diets containing 0, 60, or 120 ppm with a NOEL of 60 ppm (1.8 mg/kg/day) based on the induction of kidney vacuolated epithelium and increased bilirubin levels at the 120 ppm (3.5 mg/kg/day) dose level.

3. A chronic feeding/carcinogenicity study with Fisher 344 rats fed diets containing 0, 800, 1,600, or 3,500 ppm (equivalent to 0, 40, 80, or 175 mg/kg/day) for 116 weeks in males or 129 weeks in females resulted in a statistically significant increase in the incidence of renal adenoma and carcinoma, with a significant dose-related trend in both sexes. In female rats there was also a statistically significant increase in papilloma and combined papilloma/carcinoma of the forestomach with significant dose-related trend for combined papilloma/carcinoma.

4. A second chronic feeding/carcinogenicity study with Fisher 344 rats fed diets containing 0, 2, 4, 15, or 175 mg/kg/day with a NOEL of 2 mg/kg/day based on increased kidney weight, possible increase in kidney tubular lesions, increase in renal tubular adenomas and carcinomas, increased incidence and/or severity of hyperplasia, hyperkeratosis and ulcers of squamous mucosa of forestomach at the 4 mg/kg/day dose level. There were also increases in the incidence of renal tubular adenomas and carcinomas; increases in the incidence and severity of kidney tubular lesions; and hyperplasia, hyperkeratosis, and ulcers/erosions of squamous mucosa of the forestomach of rats fed diets containing 15 and 175 mg/kg/day.

5. A 2-year carcinogenicity study in CD-1 mice fed diets containing 0, 750, 1,500, or 3,000 ppm (equivalent to 0, 107, 214, or 428 mg/kg/day) that resulted in statistically significant increases in squamous cell carcinoma of the forestomach in both sexes, with a positive dose-related trend for combined papilloma/carcinoma in females, and statistically significant increases in the incidence of combined renal adenoma/carcinoma in dosed male mice.

6. A 2-year feeding/carcinogenicity study in male CD-1 mice fed diets containing 0, 10/15, 40, 175, or 750 ppm (equivalent to 0, 1.4/2.1, 5.7, 25, or 107 mg/kg/day), which resulted in a slight increase in tubular hyperplasia at 175 ppm, and hyperplasia and hyperkeratosis of the squamous mucosa of the forestomach at 750 ppm.

7. A developmental toxicity study with rats given gavage doses of 0, 25, 100, and 400 mg/kg/of body weight/day from days 6 through 15 of gestation with a NOEL for maternal toxicity at 100 mg/kg/day based on increased mortality, reduced body weight, and increased resorptions and post implantation losses. There were no developmental effects observed under the conditions of the study.

8. A developmental toxicity study in rabbits given gavage doses of 0, 5, 10, or 20 mg/kg/day on days 7 through 19 of gestation with a maternal NOEL of 10 mg/kg/day. Effects observed in rabbits in the high-dose group (20 mg/kg/day) were decreased body weight gain and reduced food consumption. There were no developmental effects observed in this study.

9. A two-generation reproduction study in rats fed diets containing 0, 500, 1,500, and 3,000 ppm with a reproductive NOEL of 1,500 ppm (equivalent to 115 mg/kg/day) based on lower neonatal body weights by day 21.

10. Mutagenicity studies were negative in the following acceptable assays: rat, mouse and hamster *in vivo* chromosomal aberration tests; Salmonella assays with and without activation; and mouse and rat *in vivo* cytogenetics assays. A weak positive response was elicited with chlorothalonil in an *in vivo* Chinese hamster bone marrow cytogenetics assay, which did not show a dose-response.

11. A general metabolism study in rats shows that oral absorption of aqueous suspensions of chlorothalonil is low. At a dose levels equal to or less than 50 mg/kg/day the majority of chlorothalonil was excreted in the feces as chlorothalonil within 24 hours. At a dose level of 200 mg/kg/day the rate of chlorothalonil excretion and levels in the blood are prolonged. Major detoxification occurs in the liver, by conjugation with glutathione. Although these conjugates are excreted directly into the bile, some may be transported to the kidneys where they are converted to thiol metabolites, the excretion of which is rate limited, and thus may lead to nephrotoxicity (and possible tumor formation) when overloading occurs.

The Office of Pesticide Programs' Toxicology Branch Peer Review Committee met on May 28, 1987, to evaluate the weight-of-evidence on chlorothalonil, with particular reference to its carcinogenic potential. The weight-of-evidence relating to the carcinogenicity of chlorothalonil at that time included the following:

i. A 2-year carcinogenicity study in Osborne-Mendel rats fed diets containing 0, 253, or 506 mg/kg/day, which resulted in a statistically significant increase in combined renal adenoma/carcinoma in both sexes, with a significant dose-related trend in female rats.

ii. The chronic feeding/carcinogenicity study with Fisher 344 rats (item 3, above).

iii. The 2-year carcinogenicity study in CD-1 mice (item 5, above).

The Committee classified chlorothalonil as a B2 carcinogen (probable human carcinogen) in accordance with EPA's guidelines for carcinogenic risk assessment (51 FR 33992, September 24, 1986). This decision was based on increased incidences of malignant and/or combined malignant/benign tumors (in both sexes) in two species (rat and mouse).

The Scientific Advisory Panel met on September 23, 1987 to consider the Agency's Toxicology Branch Peer Review Committee decision regarding the carcinogenicity of chlorothalonil. The Panel did not comment specifically on the Agency's evaluation and classification of chlorothalonil, although it did agree that the renal tumors in the CD-1 male mouse were biologically significant at concentrations below the maximum-tolerated dose.

The Toxicology Branch Peer Review Committee met again on May 9, 1988, to consider for the second time the classification of carcinogenicity for chlorothalonil. At that time, the Committee considered all submitted data, including interim reports (after 1 year) for the following studies:

iv. A 2-year dietary feeding study in Fisher 344 rats fed diets containing (0, 2, 4, 15, or 175 mg/kg/day) with interim findings of hyperplasia and karyomegaly of the renal cortex in males at 4, 15, and 175 mg/kg/day, and in females at 175 mg/kg/day; and squamous epithelial hyperplasia and hyperkeratosis of the gastric mucosa in both sexes at 15 and 75 mg/kg/day. See item 4 (above) for results of full 2-year study.

v. A 2-year carcinogenicity study in Charles River CD-1 male mice fed diets containing 0, 10, 40, 175, or 750 ppm (equivalent to 0, 107, 214, or 428 mg/kg/day) with a slight increase in renal tubular hyperplasia at 175 ppm, and hyperplasia and hyperkeratosis of the squamous mucosa of the forestomach at 750 ppm. See item 6 (above) for results of full 2-year study.

The Committee concluded that the evidence satisfies the criteria contained in the EPA Guidelines for sufficient

evidence of carcinogenicity and reaffirmed its classification of chlorothalonil as a Group B2 (probable human carcinogen).

As currently manufactured, chlorothalonil is contaminated with hexachlorobenzene (HCB) at levels that may accumulate in plants due to repeated applications of chlorothalonil. HCB is classified as a group B2, probable human carcinogen, by the Cancer Assessment Group. Animal feeding studies with HCB show an increased incidence of malignant tumors in two species: haemangioendothelioma in hamsters and hepatocellular carcinoma in rats, as well as confirmed reports of hepatomas in both of these species.

Dietary risk assessments for chlorothalonil and HCB indicate that there is minimal risk from established tolerances and the proposed tolerances for blueberries, filberts, and mushrooms. Dietary risk assessments were conducted using Reference Doses (RfD) and the applicable cancer potency factors to assess chronic exposure and risk from chlorothalonil and HCB residues, and the Margin of Exposure (MOE) to asses acute toxicity from chlorothalonil residues.

The Reference Dose (RfD) for chlorothalonil is established at 0.018 mg/kg of body weight (bwt)/day, based on a NOEL of 1.8 mg/kg/day from the 2-year feeding study in dogs and an uncertainty factor of 100. Available information on anticipated residues and/or percent of crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC) from existing uses. Tolerance-level residues and 100-percent crop treated were assumed to estimate dietary exposure from the proposed uses for blueberries, filberts, and mushrooms. The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues and 100-percent crop treated. The ARC from existing uses and the proposed uses utilizes less than 1 percent of the RfD for the U.S. population and all population subgroups.

The RfD for HCB is established at 0.0008 mg/kg/day based on a NOEL of 0.08 mg/kg of body weight/day and an uncertainty factor of 100. The NOEL was taken from a 130-week feeding study in rats that showed hepatic centrilobular basophilic chromogenesis. Since there are no published tolerances for HCB, the ARC was calculated by multiplying the anticipated residues for chlorothalonil by 0.05 percent, an adjustment based on comparisons of residue data for the two compounds from controlled field trials. The ARC for HCB from existing uses of chlorothalonil and the proposed uses on blueberry, filberts, and mushrooms utilizes less than 1 percent of the RfD for the U.S. population and less than 2 percent of the RfD for children, aged 1 to 6 (the population subgroup at greatest risk).

The upper-bound carcinogenic risks were calculated using the ARC estimates for dietary exposure from existing uses; tolerance level residues from the proposed uses on blueberries, filberts, and mushrooms; and Q*s of 0.00766 $(mg/kg/day)^{-1}$ for chlorothalonil and 1.02 $(mg/kg/day)^{-1}$ for HCB. The upper-bound carcinogenic risk from existing uses and the proposed uses of chlorothalonil is estimated at 7.7×10^{-7} with the proposed uses contributing 2.4×10^{-7} to the cancer risk assessment. The upper-bound carcinogenic risk for HCB is estimated at 1.9×10^{-7} for existing uses and the proposed uses, with the proposed uses contributing 1.8×10^{-8} to the cancer risk assessment.

The MOE is a measure of how closely the high-end acute dietary exposure comes to the NOEL from the toxicity endpoint of concern. For chlorothalonil, the MOE was calculated as ratio of the lowest-observed-effect level (LOEL) of 175 mg/kg/day from the subchronic study in rats. A NOEL was not established since an effect (renal and gastric lesions) was observed at the single dose tested. An uncertainty factor of 300 was used to calculate the MOE since there was no available NOEL from the study. The acute dietary margin of exposure from chlorothalonil is calculated to be greater than 300 for the general population and all population subgroups. Chlorothalonil poses minimal acute dietary risk.

The nature of the residue in blueberries, filberts, and mushrooms is adequately understood. The parent compound and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) are of regulatory concern. An adequate analytical method (gas chromatography) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual, Vol. II (PAM II). There are currently no actions pending against the registration of this chemical.

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with blueberries, filberts, or mushrooms.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 0E3889, 2E4113, 5E4538/P639] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.275, by amending paragraph (a) in the table therein by adding entries for blueberries and mushrooms and by amending paragraph (b) in the table therein by adding an entry for filberts, to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Blueberries	1.0
* * * * *	
Mushrooms	1.0
* * * * *	

(b) * * *

Commodity	Parts per million
Filberts	0.1
* * * * *	

[FR Doc. 96–879 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 87–124; DA 96–24]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility)

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; Extension of time for comments and replies.

SUMMARY: By Order the Commission granted a request for extension of the time of the comment and reply comment periods concerning a Notice of Proposed Rulemaking regarding hearing aid compatibility of wireline telephones. The proposed rules would require that all wireline telephones in the workplace, confined settings (e.g., hospitals, nursing homes) and hotels and motels eventually would be hearing aid compatible and have volume control.

DATES: Written comments by the public on the proposed rules and on the proposed and/or modified information collections are due on or before January 29, 1996, and reply comments are due on or before February 29, 1996.

ADDRESSES: Office of the Secretary, Room 222, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street NW., Washington, DC 20503 or via the Internet to fain____t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Attorney, 202/418–2340, Fax 202/418–2345, TTY 202/418–0484, glipscom@fcc.gov, Network Services Division, Common Carrier Bureau. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Order adopted and released on January 17, 1996 (DA 96–24), to extend the filing deadline for comments and replies in the Notice of Proposed Rulemaking in the matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, (CC Docket 87–124, adopted and released November 28, 1995, 60 FR 63667, December 12, 1995). The file is available for inspection and copying during the weekday hour of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street NW., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington DC 20037, phone 202/857–3800.

The Commission noted that extensions of time are not routinely granted. However, the Telecommunications Industry Association (TIA) has shown good cause for the grant of additional time. TIA states that because of the recent government shutdown and weather emergency, TIA was not able to contact FCC staff for clarifications regarding technical proposals, and to circulate comments among TIA members. TIA and its members are uniquely qualified to comment on these technical proposals, since TIA represents many telecommunications manufacturers. The comment and reply comment deadlines originally were set for January 12 and February 16, 1996, respectively. TIA requested a thirty day extension of each deadline. The Commission granted an extension of comment period until January 29, 1996, and of the reply period until February 29, 1996.

List of Subjects

47 CFR Part 64

Communications common carriers, Handicapped, Telephone, Hearing aid compatibility.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telephone, Hearing aid compatibility, Volume control.

Federal Communications Commission.

Linda B. Dubroof,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–1071 Filed 1–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[CS Docket No. 95–178; FCC 95–489]

Cable Television Service; Definitions for Purposes of the Cable Television Must-Carry Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking

SUMMARY: The Commission, through this action, invites comments on a revised market definition process for purposes of the cable television broadcast signal carriage rules. The current process uses the Arbitron ''Area of Dominant Influence'' (''ADI'') as the applicable market definition. The Commission anticipated that Arbitron ADI market definitions would continue to be revised annually and that new maps would be available for use every three years coincident with the triennial must-carry/retransmission consent election cycle. However, the next election must be made by October 1, 1996, and Arbitron has ceased updating its ADI market list. Therefore, the Commission proposes to retain the existing market definition process for the next must-carry/retransmission consent election.

DATES: Comments are due on or before February 5, 1996 and reply comments are due on or before February 26, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION, CONTACT: John Adams or Marcia Glauberman, Cable Services Bureau (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket No. 95–178, adopted December 5, 1995 and released December 8, 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, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 1919 M Street NW., Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rulemaking

1. The Commission, on its own motion, proposes to retain the existing market definitions for the next must-carry/retransmission consent election. The next election must be made by October 1, 1996.

2. In light of the fact that Arbitron has ceased its designation and publication of ADI market areas, a new mechanism must be established for defining market areas in which television broadcasters may insist on carriage. The Commission has concluded that several options appear to be available: (1) the Arbitron areas of dominant influence (''ADI'') could be substituted with Nielsen ''Designated Market Areas'' or ''DMAs;'' (2) continue to use Arbitron's 1991–92 Television ADI Market Guide to define market areas, subject to individual review and refinement through the Section 614(h) process; or (3) retain the existing market definitions for the 1996 election period and switch to a Nielsen based standard thereafter.

3. It is our tentative view that the second of these options is preferable. It has the advantage of providing stability in the television broadcast signal carriage process. It is also not clear whether changing from ADIs to DMAs and revising market boundaries every three years based on shifting audience patterns, involves any systematic improvement in market definitions. Finally, changing from one system to the other would raise questions as to the numerous cases which have been processed under Section 614(h) revising market areas with respect to particular stations and particular communities. Comment is sought on the above alternatives as well as suggestions for any other alternatives that would better accomplish the market definition objectives of the must-carry provisions of Section 614 of the Communications Act.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed would continue the existing market definitions and the existing market definition change process and would thereby avoid modifications otherwise to be anticipated in a relatively limited number of markets in which there are not likely to be a significant number of small business entities impacted. The Secretary shall cause a copy of this Notice of Proposed Rulemaking, including the certification, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally, 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before February 5, 1996, and reply comments on or before February 26, 1996. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Title 47 of the CFR is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 544A, 552 as amended.

2. Section 76.55 is amended by revising paragraph (e) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) *Television market.* (1) A commercial broadcast television station's market, unless amended pursuant to Section 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–92 Television ADI Market Guide, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) A cable system's television market(s) shall be the one or more ADIs in which the communities it serves are located.

(3) In addition, the county in which a station's community of license is located will be considered within its market.

* * * * *

[FR Doc. 96–960 Filed 1–23–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 232

Defense Federal Acquisition Regulation Supplement; Finance

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect recent changes in the Federal Acquisition Regulation pertaining to contract financing.

DATE: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 25, 1996, to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telefax number (703) 602–0350. Please cite DFARS Case 95–D710 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance Team Leader, (703) 697–6710. Please cite DFARS Case 95–D710

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) implement the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) and resulting changes to the Federal Acquisition Regulation (FAR) published as Item VII of Federal Acquisition Circular 90–32 on September 18, 1995 (60 FR 48206), and Items I and IV of Federal Acquisition Circular 90–33 on September 26, 1995 (60 FR 49706). The proposed revisions include deletion of DFARS sections 232.173, Reduction or Suspension of Contract Payments Upon Finding of Fraud, and 232.970, Payment of Subcontractors, since equivalent coverage is now provided in the FAR; the addition of DFARS Subpart 232.2, Commercial Item Purchase Financing, to establish prompt payment times for commercial payments, to provide guidance on the use of installment payments for commercial financing, and to specify administrative instructions for Foreign Military Sales (FMS) contracts; the addition of DFARS Subpart 232.10, Performance-Based Payments, to establish prompt payment times for performance-based payments and to specify administrative instructions for FMS contracts; and to make a number of editorial changes to reflect revisions made in the FAR.

B. Regulatory Flexibility Act

The proposed changes to DFARS Part 232 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule specifies prompt payment times, at 232.206(f) and 232.1001(d), that are shorter than the equivalent standard prompt payment times in the Federal Acquisition Regulation, and thus should be beneficial for small entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. comments are invited. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D710 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 232

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 232 be amended as follows:

1. The authority citation for 48 CFR Part 232 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Sections 232.006, 232.006–5, 232.070, 232.072, 232.071–1, 232.072–2, and 232.072–3 are added to read as follows:

Sec.

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006–5 Reporting.

Departments and agencies, in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Technology), through the Director of Defense Procurement, annual reports (Report control symbol DD–ACO(A) 1891) containing the information required by FAR 32.006–5.

232.070 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology), USD(A&T)DP, is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the military departments or defense agencies. Proposals by the military departments

and defense agencies, to exercise agency discretion, shall be submitted to the Director of Defense Procurement, through the DoD Contract Finance Committee (see 232.071).

(b) The departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to USD(A&T)DP for consideration through the department/agency Contract Finance Committee members (see also subpart 201.4 for deviation request and approval procedures).

(c) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the departmental/agency headquarters. Departments/agencies may establish contract financing offices at operational levels.

(1) Department/agency contract financing offices are—

(i) Army—Office, Assistant Secretary of the Army (Financial Management);

(ii) Navy—Executive Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management;

(iii) Air Force—Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center;

(iv) Defense agencies—Office of the agency comptroller.

(2) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases which involve unusual contract financing requirements.

232.071 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of the USD(A&T)DP, serving as chairman;

(2) A representative of the Comptroller of the Department of Defense;

(3) A representative of the Defense Finance and Accounting Service;

(4) A representative of the Civilian Agency Acquisition Council (for matters pertaining to the Federal Acquisition Regulation);

(5) A representative of the National Aeronautics and Space Administration (for matters pertaining to the Federal Acquisition Regulation);

(6) An advisory consultant from the Defense Contract Audit Agency; and

(7) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists the USD(A&T)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through the USD(A&T)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.072–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions of paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.072–2 Appropriate information.

(a) The contracting officer shall obtain whatever type and depth of financial and other information is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for the protection of the Government's interests, the contracting officer must insist upon obtaining that information which is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (10) is required to comply with 232.072–1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the two preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance;

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services;

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation;

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past two years; and

(iii) Deferred to future periods.

(5) Business base and forecast which—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072–3).

(7) Financing arrangement information which discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.072–3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. Whenever there is doubt about the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the date and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

(f) The contracting officer should receive the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

3. Subpart 232.1 is revised to read as follows:

Subpart 232.1—Non-Commercial Item Purchase Financing

Sec.

Subpart 232.1—Non-Commercial Items Purchase Financing

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or stage of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR subpart 32.10.

232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized:

(1) Letter contracts contemplating a fixed-price contract;

(2) Orders under basic ordering agreements;

(3) Spares provisioning documents annexed to contracts;

(4) Unpriced equitable adjustments on fixed-price contracts; and

(5) Orders under indefinite delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

See 232.070 for offices to be consulted concerning financial matters within the Department of Defense.

4. Subpart 232.2 is added to read as follows:

Subpart 232.2—Commercial Item Purchase Financing

Sec.
232.202–4 Security for Government financing.
232.206 Solicitation provisions and contract clauses.
232.207 Administration and payment of commercial financing payments.

Subpart 232.2—Commercial Item Purchase Financing

232.202–4 Security for Government financing.

(a)(2) When determining whether an offeror's financial condition is adequate security, see 232.072–2 and 232.072–3 for guidance on evaluation of financial condition. It should be noted that an offeror's financial condition may be sufficient to make the contractor responsible for award purposes, but not be sufficient to be adequate as security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(d) *Instructions for multiple appropriations.* If the contract contains Foreign Military Sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

(f) *Prompt payment for commercial purchase payments.* The contracting officer shall incorporate the following standard prompt payment times for commercial item contract financing:

(i) Commercial Advance Payments: 30 days from the later of receipt by the designated billing office of a proper request for payment, or the contractor entitlement date specified in the contract;

(ii) Commercial Interim Payments: 14 days from the later of receipt by the designated billing office of a proper request for payment, or the contractor entitlement date specified in the contract. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR subpart 32.9 for invoice payments for the item delivered.

(g) *Installment payment financing for commercial items.* Installment payment financing shall not be used for defense contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum ceiling rate established in the FAR (See FAR 32.206(g)(2)).

232.207 Administration and payment of commercial financing payments.

(b)(2) If the contract contains Foreign Military Sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

232.970, 232.970–1, 232.970–2 [Removed]

5. Sections 232.970, 232.970–1, and 232.970–2 are removed.

6. Subpart 232.10 is added to read as follows:

Subpart 232.10—Performance-Based Payments

Sec.
§ 232.1001 Policy.
§ 232.1004 Procedure.
232.1007 Administration and payment of performance-based payments.

Subpart 232.10–Performance-Based Payments

232.1001 Policy.

(d) The contracting officer shall incorporate the following standard prompt payment times for performance-based payments: 14 days from the later of receipt by the designated billing office, of a proper request for payment, or the contractor entitlement date specified in the contract.

232.1004 Procedure.

(c) *Instructions for multiple appropriations.* If the contract contains Foreign Military Sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

232.1007 Administration and payment of performance-based payments.

(b)(2) If the contract contains Foreign Military Sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

[FR Doc. 96–973 Filed 1–23–96; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 12]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of decision not to issue a supplemental notice of proposed rulemaking.

SUMMARY: FRA published a notice on July 3, 1995 (60 FR 34498), which stated that a second or supplemental notice of proposed rulemaking (NPRM) would be issued for the rulemaking (59 FR 42880) to revise the railroad accident reporting regulations. The decision to issue a supplemental NPRM was made pursuant to requests advanced by some participants at a public regulatory conference held on January 30–February 2, 1995 (59 FR 66501), in Washington, D.C., during which specific topics were discussed related to the accident reporting NPRM. It was anticipated that the supplemental NPRM would address whether or not a meaningful performance standard for accident reporting could be devised for use by the railroads. It was also anticipated that the supplemental NPRM would discuss revised documentation requirements for the proposed Internal Control Plan; calculation of damage costs for rail equipment accidents and incidents for the determination of whether the threshold is met for FRA reporting purposes; and the proposed definition for the classification ''worker on duty'' as it pertains to ''contractors'' and ''volunteers'' performing safety-sensitive functions.

FRA has reviewed thoroughly the written comments received in response to the NPRM; the transcripts of the public hearings which were held in Washington, D.C., Kansas City, Missouri, and Portland, Oregon, in October–November, 1994; as well as the transcripts of the public regulatory conference held in Washington, D.C., in January–February, 1995. This review revealed that a supplemental NPRM is not warranted for the railroad accident reporting NPRM. In the notice issuing the final rule, FRA will deal fully with major alternative resolutions for the issues in the rulemaking explaining clearly why they are endorsed or rejected in favor of the option selected. The approach described in the final rule notice will be a logical outgrowth of the original proposal and the cooperative efforts of all parties involved in achieving solutions to the regulatory issues posited in the railroad accident reporting NPRM.

FOR FURTHER INFORMATION CONTACT: Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202–366–0628); or Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone 202–366–2760 or 202–501–4863).

Issued in Washington, D.C., on January 18, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–954 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Review of Information Concerning Brush-Tailed Possums of the Genus Trichosurus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) is reviewing available economic and biologic information on brush-tailed possums of the genus *Trichosurus* for possible addition to the list of injurious wildlife under the Lacey Act. Their importation and introduction into the natural ecosystem of the United States may pose a threat to agriculture, the health and welfare of human beings, and the welfare and survival of native wildlife species. Listing *Trichosurus spp.* as injurious would prohibit their importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States with limited exceptions. This notice seeks comments form the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before March 25, 1996.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, 1849 C Street, NW., Mail Stop 840 ARLSQ, Washington, DC 20240, or FAX (703) 358–2044.

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Division of Fish and Wildlife Management Assistance at (703) 358–1718.

SUPPLEMENTARY INFORMATION: In a July 11, 1995, letter to the Department of the Interior, the Texas Animal Health Commission expressed concern that *T. vulpecula* posed a threat to agriculture, human health, and wildlife resources. They requested that the Service take the necessary steps to prohibit importation of *T. vulpecula* into the United States.

T. vulpecula is a fur-bearing marsupial native to Australia. In the 1800s, they were introduced into New Zealand to support the fur industry. They are claimed to be so well established in both countries that they are considered pests and have considerable impact on agriculture, humans, and wildlife habitat.

They reportedly carry bovine tuberculosis, which has infected New Zealand's domestic livestock population. Their diet consists of vegetation and insects, and they also kill young birds. They have damaged gardens, orchards, crops, pastures, plantations, and native forests.

T. vulpecula is extremely common and adaptable. Generally, they can be found in forested areas, however, they have been located in areas without trees such as borrows, caves, and buildings. They have been able to dwell and expand successfully next to humans.

They mainly breed in the spring and autumn and usually produce one offspring at a time. The young are weaned in about 6 months. Their life span is estimated at approximately 12 years.

The Lacey Act (18 U.S.C. 42) and implementing regulations in 50 CFR Part 16 restrict importation into or the transportation of live wildlife or eggs thereof between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any nonindigenous species of wildlife determined to be injurious or potentially injurious to certain interests including those of agriculture, horticulture, forestry, the health and welfare of human beings and the welfare and survival of wildlife or wildlife resources of the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes, or without permit by Federal agencies solely for their use. If the process initiated by this Notice results in the addition of genus *Trichosurus* to the list of injurious wildlife contained in 50 CFR Part 16, their importation into the United States would be prohibited except under the conditions, and for the purposes, described above.

Although the original request was to prohibit importation of *T. vulpecula,* other members of genus *Trichosurus* may pose the same potential threat. This Notice solicits economic, biologic, or other information concerning genus *Trichosurus.* The information will be used to determine if they are a threat, or potential threat, to those interests of the United States Delineated above, and thus warrant addition to the listing of injurious wildlife. The information also will assist in preparing impact analyses and examining alternative protective measures under the Regulatory Flexibility Act (5 U.S.C. 601).

Lists of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

This Notice is issued under the authority of Lecey Act (18 U.S.A. 42).

Dated: December 14, 1995.

John Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–946 Filed 1–25–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950421111–5111–01; I.D. 120695A]

RIN 0648–AH95

Summer Flounder Fishery; Dealer Reporting Requirements

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

ACTION: Withdrawal of proposed rule.

SUMMARY: NMFS is withdrawing the proposed rule that would have amended the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP) to make it easier for federally permitted dealers to comply with existing reporting requirements and to improve monitoring of the commercial summer flounder quota.

DATES: This proposed rule is withdrawn January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, 508–281–9221.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the United States-Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

The summer flounder fishery is managed under a quota system. The

quota is divided among the coastal states based upon set percentages. Landings must be monitored weekly in order to determine when a state's quota has been reached.

Since 1993, federally permitted summer flounder dealers have been required to report weekly all fish purchases. While several species of fish purchased by these dealers are under quota management systems (summer flounder, squid, mackerel, and butterfish), only the summer flounder quota requires weekly monitoring at this time. The quotas for the remaining species purchased by these dealers can be adequately monitored through monthly reports.

Consequently, NMFS developed a proposed rule published in the Federal Register on May 2, 1995 (60 FR 21491), to revise the weekly reporting requirement to make it pertain to summer flounder purchases only. NMFS believed that reporting purchases of all species on a weekly basis was unnecessary and burdensome. The comprehensive reporting of all fish purchases would have been required monthly rather than weekly. This proposed change would have reduced the burden associated with the reporting requirement and as a secondary benefit, would have allowed more accurate price information to be collected, since such information was often unavailable to dealers on a weekly basis. NMFS further proposed to require that the weekly summer flounder purchase report be made via an Interactive Voice Response (IVR) system, rather than by a written report. An IVR system would have made it easier for federally permitted dealers to comply with existing reporting requirements and would have improved the monitoring of the commercial summer flounder quota.

NMFS has decided to withdraw this proposed rule. Initially, NMFS opted for the IVR system for weekly quota (real-time) monitoring on the premise that only the summer flounder quota would require weekly monitoring. However, that premise is no longer valid. The New England and Mid-Atlantic Fishery Management Councils are considering real-time monitoring in additional fisheries in the near future, and, consequently, it is not likely that the IVR system is a viable option for real-time monitoring of multiple species. It is apparent that a more comprehensive real-time monitoring system may be required, and modification of the summer flounder reporting requirements would be done as part of that system.

The proposed rule also contained three technical changes that would have modified the summer flounder regulations pertaining to federally permitted dealers. These proposed measures are also being withdrawn at this time and will be addressed in a future action.

Consequently, the proposed rule to amend the summer flounder regulations, published May 2, 1995, is being withdrawn.

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

Dated: January 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–948 Filed 1–23–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 16
Wednesday, January 24, 1996

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–083–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the Veterinary Accreditation Program.

DATES: Comments on this notice must be received by March 25, 1996, to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 95–083–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 95–083–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information on the Veterinary Accreditation Program, contact Dr. J. A. Heamon, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231, (301) 734–6954. For copies of the proposed collection of information, contact Ms. Cheryl Jenkins, APHIS' Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Accreditation Program.

OMB Number: 0579–0032.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The Veterinary Accreditation Program ensures that adequate numbers of qualified veterinarians are available to work with the Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), to carry out its mission: to protect and improve the health, quality, and marketability of U.S. animals and animal products. Accredited veterinarians cooperate with VS to perform many official functions and are truly the backbone of U.S. regulatory programs for livestock and poultry diseases. The Veterinary Accreditation Program is founded on the mutual respect and professional partnership between public and private practitioners.

Prior to participating in the Veterinary Accreditation Program, veterinarians must meet five requirements, including submission of a written application and completion of a core orientation program. Information on the application is used by VS to help determine that a veterinarian has met the requirements to become accredited. State animal health officials, who have an advisory role in the application process, must also review all applications and recommend that applicants be approved or disapproved based on this review. The orientation program is designed to teach applicants the scope of their duties and responsibilities as accredited veterinarians, thus helping to assure that accredited veterinarians are knowledgeable of current Federal and State animal health rules, objectives, and programs, and competent in their application. As a result of the collection of this information a veterinarian may be accredited to perform official functions for APHIS, VS.

Once a veterinarian becomes accredited, he/she is responsible for completing and maintaining official paperwork associated with accredited work. Paperwork associated with accredited work includes health certification documents, documents associated with applying and removing official seals and cleaning and disinfection plans, and laboratory test reports.

The regulations governing veterinary accreditation allow for information on accredited veterinarians to be periodically updated. Accredited veterinarians are asked to confirm or update their name, address, professional activity, licensure, and education information. The purpose of obtaining this information is to maintain an accurate, complete, and current national database of accredited veterinarians.

Through this notice APHIS is soliciting public comment on the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .802 hours per response.

Respondents: Veterinary students, veterinarians in private clinical practice, State animal health officials.

Estimated Number of Respondents: 58,024.

Estimated Number of Responses per Respondent: 1.293.

Estimated Total Annual Burden on Respondents: 60,210.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection.

Done in Washington, DC, this 2nd day of January 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–925 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Southwestern Region: Arizona, New Mexico, West Texas and Oklahoma. Notice to Extend Public Comment Period, RE: Final Environmental Impact Statement for Amendment of Forest Plans in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice to extend public comment period, Final Environmental Impact Statement [FEIS].

SUMMARY: The Southwestern Region of the Forest Service published a notice of availability for public comment on a final environmental impact statement in the Federal Register (Vol. 60, No. 213, page 55841) on November 3, 1995. The comment period was subsequently extended from December 4, 1995 to January 12, 1996 regarding that FEIS Federal Register (Vol. 60, No. 234, page 62383) on December 6, 1995. This notice is issued to extend the comment period from January 12, 1996 to a period of 30 days following release of the *Mexican Spotted Owl Recovery Plan* by the United States Fish and Wildlife Service. The FEIS concerns Amendment of Forest Plans in the Southwestern Region, and implementation, standards and guidelines for Northern Goshawk and Mexican Spotted Owl.

EFFECTIVE DATE: January 24, 1996.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect Southwestern Region Forest Land and Resource Management Plans.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Arthur S. Briggs, Southwestern Regional Office, (505) 842–3210.

Dated: January 18, 1996.

John R. Kirkpatrick,

Deputy Regional Forester.

[FR Doc. 96–985 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Housing Service

Notice of Recipients of Fiscal Year 1995 Section 515 Loan Funds

AGENCY: Rural Housing Service,[1] USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) (formerly Farmers Home Administration (FmHA)) has compiled a list of all recipients of fiscal year (FY) 1995, Section 515 loan funds. This action is taken to inform the public of recipients of FY 1995 Section 515 funds. The intended effect is public awareness.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Rural Housing Service, USDA, AgBox 0781, Washington, D.C. 20250, telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Discussion of Notice

The information available is a 55-page compilation that lists borrower names, names of the general partners, project name and location, number of units developed, and RHS loan amount. This information is available to all interested parties and can be obtained by writing the following address: USDA, RHS, Multi-Family Housing Processing Division, AgBox 0781, Washington, D.C. 20250. The request must be accompanied by a self-addressed, self-stamped envelope. Envelopes must be a minimum of 11″x 9″ in size, and bear first class postage of $1.26. Requests without the required return envelope and postage will not be acknowledged or responded to.

Dated: January 6, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–928 Filed 1–23–96; 8:45 am]

BILLING CODE 3410–07–U

[1] See the name change for this agency published by the Secretary of Agriculture at 60 FR 66713, December 26, 1995.

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 951213301–5301–01]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with Title 13, United States Code (Sections 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: David W. Cartwright on (301) 457–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

These surveys have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0607–0392, 0607–0395, 0607–0476, and 0607–0625 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

MA22F—Yarn Production
MA22K—Knit Fabric Production
MA22Q—Carpets and Rugs
MA23D—Gloves and Mittens
MA24T—Lumber Production and Mill Stocks
MA28A—Inorganic Chemicals
MA28B—Inorganic Fertilizer Materials and Related Products

MA28C—Industrial Gases
MA28F—Paint and Allied Products
MA28G—Pharmaceutical Preparations, except Biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, Scientific, Technical, and Industrial Glassware
MA33A—Ferrous Castings
MA33B—Steel Mill Products
MA33E—Nonferrous Castings
MA33L—Insulated Wire and Cable
MA34K—Steel Shipping Drums and Pails
MA35A—Farm Machinery and Lawn and Garden Equipment
MA35D—Construction Machinery
MA35F—Mining Machinery and Mineral Processing Equipment
MA35J—Selected Industrial Air Pollution Control Equipment
MA35L—Internal Combustion Engines
MA35M—Air-conditioning and Refrigeration Equipment
MA35N—Fluid Power Products
MA35P—Pumps and Compressors
MA35Q—Antifriction Bearings
MA35R—Computers and Office and Accounting Machines
MA36A—Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA36E—Electric Housewares and Fans
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36M—Consumer Electronics
MA36P—Communication Equipment
MA36Q—Semiconductors and Printed Circuit Boards
MA37D—Aerospace Orders
MA38B—Selected Instruments and Related Products
MA38R—Electromedical Equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour Milling Products
M32G—Glass Containers
M33D—Aluminum Producers and Importers
M33J—Inventories of Steel Producing Mills
M37G—New complete Aircraft and Aircraft Engines, except Military
M37L—Truck Trailers
MQ22D—Consumption on the Woolen System and Worsted Combing
MQ23A—Apparel (short form)
MQ23X—Sheets, Pillowcases, and Towels
MQ32A—Flat Glass
MQ32D—Clay Construction Products
MQ34E—Plumbing Fixtures
MQ36B—Electric Lamps
MQ36C—Fluorescent Lamp Ballasts

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics such as total value of shipments, employment, payroll, workers hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

This survey has been approved by the OMB under OMB Control Number 0607–0449 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Research and Development

The Annual Survey of Research and Development is designed to collect detailed information on U.S. industry's R&D performances. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D for comparative purposes, the total net sales, receipts and employment of the company.

This survey has been resubmitted for extension to the OMB under OMB control number 3145–0027 for approval in accordance with the Paperwork Reduction Act, Public Law 104–13, as amended.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: December 18, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96–987 Filed 1–23–96; 8:45 am]

BILLING CODE 3510–07–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Public Hearing

AGENCY: Corporation for National and Community Service.

SUMMARY: The Corporation for National Service (the Corporation) announces the convening of a public hearing to be held on Thursday, February 1, 1996 from 6:30 p.m.–9:00 p.m. in Durham, North Carolina. Members of the public are invited to participate.

The hearing will address three questions: (1) How best can national service improve communities? (2) What role can service play in making participants better citizens? (3) What is the appropriate role of the federal government in supporting service?

DATES: The public hearing will be held on Thursday, February 1, 1996, from 6:30 p.m.–9:00 p.m.

ADDRESSES: The public hearing will be held at Duke University, Durham, N.C., at the Terry Sanford Institute of Public Policy, Classroom 04.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service at (202) 606–5000, ext. 282. TTD Number: (202) 606–5256. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION: The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Dated: January 19, 1996.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 96–1056 Filed 1–23–96; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0038]

Clearance Request for Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0038).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid. A request for public comments concerning this burden estimate was published at 60 FR 53914, October 18, 1995. No public comments were received.

DATES: *Comment Due Date:* February 23, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,673;* responses per respondent, *1*; total annual responses, *4,673;* preparation hours per response, *.5;* and total response burden hours, *2,337*.

Obtaining Copies of Justifications

Requester may obtain copies of justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

Dated: January 18, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–944 Filed 1–23–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0139]

Request for Public Comments Regarding OMB Clearance Entitled Federal Acquisition and Community Right-to-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance received pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13) (3000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection approved pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13). This OMB clearance (9000–0139) currently expires on January 31, 1996.

DATES: *Comment Due Date:* February 23, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The interim rule added FAR Subpart 23.9 and its associated solicitation provision and contract clause which implement the requirements of Executive Order (E.O.) 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing Executive Order 12969; Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The interim rule requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). The rule does not apply to acquisitions of commercial items under FAR Part 12 or contractor facilities located outside the United States. This rule does not apply to subcontractors beyond first-tier.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *0.50* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents (includes first-tier subcontractors), *167,487*; responses per respondent, *1*; total annual responses, *167,487*; preparation hours per response, *0.50*; and total response burden hours, *83,744*.

Obtaining Copies of Justifications

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: January 8, 1996.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 96–945 Filed 1–23–96; 8:45 am]
BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Cancer Treatment Clinical Trials

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the DoD will expand a current demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials. Participation in these clinical trials will improve access to promising cancer therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. This demonstration project is under the authority of 10 U.S.C. 1092.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

A. Background

On November 15, 1994, the Department provided notice of a demonstration in the Federal Register (59 FR 58834) which provides CHAMPUS reimbursement for eligible beneficiaries who receive treatment under approved National Cancer Institute trials for high dose chemotherapy with stem cell rescue (HDC/SCR) for breast cancer. The National Cancer Institute (NCI) is a component of the National Institutes of Health (NIH) of the Department of Health and Human Services. The demonstration purpose was to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of HDC/SCR in the treatment of breast cancer. The November 15, 1994, notice anticipated the possibility of expanding the demonstration to include other protocol-based clinical investigations which have been NCI approved.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department is expanding its current breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that the increased access to innovative cancer therapies will occur at a cost comparable to that the Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

B. Requirements of participation

Participation in this demonstration is limited to Phase II or Phase III clinical trials sponsored by the National Cancer Institute. Sponsorship by the National Cancer Institute is defined as review and approval of clinical trials under the Cancer Therapy Evaluation Program, NCI Cooperative Group studies, NCI Cancer Center studies, or NCI Grant studies. Beneficiaries receiving CHAMPUS treatment in a protocol outside one of these four categories are not eligible for participation.

Cancer Therapy Evaluation Program (CTEP). Under this NCI program, all protocols which involve the use of NCI investigational drugs or studies that have any NCI funding and use an investigational agent. CTEP reviews each protocol for completeness, scientific merit, duplication of existing studies, patient safety, and adequacy of regulatory and human subjects protective aspects. Upon final acceptance of the protocol, written approval is sent to the protocol source.

Cooperative Group Studies. NCI Cooperative Groups are composed of academic institutions and cancer treatment centers and practices throughout the Untied States and abroad which collaborate in NCI-sponsored research by contributing patients to NCI approved group-conducted clinical trials. The groups vary in research focus but share a common purpose of developing and conducting large scale trials in multi-institutional settings.

Cancer Center Studies. The NCI Cancer Centers Program includes NCI-designated institutions which meet NCI criteria as clinical and comprehensive cancer centers. NCI sponsored studies at cancer centers include all protocols that have been approved by an NCI approved institutional peer review and quality control system at the institution, as well as cooperative group, CTEP reviewed studies, and grant studies.

NCI Grants. NCI directly supports clinical investigations through a variety of contract and grant mechanisms. All clinical trial protocols are peer reviewed, quality assured and meet all FDA requirements.

The Department, through CHAMPUS, will provide reimbursement for all medical care required as a result of participation in approved clinical trials. This includes purchasing and administering all approved chemotherapy agents (except for the investigational agent), all inpatient and outpatient care, including diagnostic and laboratory services not otherwise reimbursed under an NCI grant program. CHAMPUS will not provide reimbursement for costs of non-treatment research activities associated with the clinical trials. The Department will not provide reimbursement for care rendered in the National Institutes of Health Clinical Center. CHAMPUS beneficiaries seeking treatment in an NCI sponsored clinical trial must receive preauthorization for proposed treatment. All institutional and individual providers must be CHAMPUS authorized providers in order to receive reimbursement under this demonstration. Evidence of NCI sponsorship for a requested protocol will be that it is identified in the NCI comprehensive data base, Physician's Data Query (PDQ), or NCI supplements to that data base.

C. Caseload, Costs

Approximately 11,760 CHAMPUS eligibles are diagnosed with some form of cancer each year, based on age

adjusted incidence rates. Recognizing that some individuals participating in Phase III trials would be randomized for conventional treatment as part of a control group, the number of cases receiving treatment under NCI-sponsored Phase II and Phase III clinical trials is roughly estimated to be between 120 and 350. The number may grow as awareness of the expended demonstration increases the potential pool of patients meeting protocol eligibility requirements, and as new NCI studies are established for a wider variety of cancer treatments.

D. Operation of the Demonstration

The Director, OCHAMPUS will designate a first line determiner (which may be a CHAMPUS contractor) regarding eligibility of specific protocols, specific institutions conducting those protocols and the eligibility of each specific CHAMPUS patient's participation in protocols under the terms of the Demonstration. The Assistant Secretary of Defense (Health Affairs) will designate a Project Officer in the Office of the Deputy Assistant Secretary of Defense for Clinical Services who will provide clinical oversight for the demonstration and resolve any clinical issues that cannot be resolved by the Director, OCHAMPUS, or designee.

Demonstration participation will be available to all CHAMPUS eligible beneficiaries. Active duty members continue to be eligible for direct care system services. OCHAMPUS will contract for and provide day to day oversight of contractor case referral, case coordination, demonstration funds disbursements and maintaining the integrity of those funds, identification of the services that are payable under CHAMPUS and TRICARE, and all related tracking and reporting requirements.

Each patient with cancer would undergo an initial evaluation by his or her physician. After discussing the various treatment options with the patient, if the patient agrees to enter a clinical study, the physician will determine available NCI clinical trials and participating institutions. The physician will then arrange for evaluation of the patient at the selected center. Physicians at the center involved in the clinical trial would make the actual patient selection based upon the clinical criteria for their study.

The contractor(s) would not be involved in clinical issues or in directing patients to a particular institution or a specific clinical trial. The contractor(s) would be the single point of contact for nationwide provider and patient information and claims adjudication and payment.

The HDC/SCR clinical trials for breast cancer demonstration project is hereby terminated as a separate project. It is fully incorporated into this NCI clinical trials demonstration project.

E. Limitations of the Demonstration

This demonstration is limited to protocols which are NCI-sponsored Phase II and Phase III clinical trials. All care reimbursed as part of this demonstration must fall into one of the four NCI sponsorship categories described in this demonstration notice. No CHAMPUS reimbursement will be allowed for participation in clinical trials that are not sponsored by the NCI. All standard CHAMPUS and TRICARE rule, policies, and regulations will continue to apply, except where otherwise noted in this demonstration. Treatment under this demonstration is exempt from Specialized Treatment Services (STS) Program requirements.

F. Effective Date.

The final terms and conditions of this demonstration were approved by the Assistant Secretary of Defense (Health Affairs) during the first days of January, 1996. We are aware of specific cases in which therapy under NCI sponsored clinical trials was required to begin immediately. We have therefore established an effective date of January 1, 1996, for this demonstration. We are waiving the normal 30-day advance notice in order to accommodate these urgent cases. This demonstration will end December 31, 1996, unless extended by another notice. If, after the year under demonstration there is evidence of significant increases in cost as a result of beneficiary participation in clinical trials for cancer, the Department will re-evaluate the continuation of the demonstration.

Dated: January 19, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–971 Filed 1–23–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Policy Board Advisory Committee; Notice of Advisory Committee Meeting

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 5–6 February 1996 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: January 18, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–970 Filed 1–23–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1700, Thursday, February 29, 1996 and 0800–1200, Friday, March 01, 1996. The purpose of the meeting is to discuss infectious disease issues relevant to the Bosnian deployment. The meeting location will be at the Walter Reed Army Institute of Research, Washington, D.C., Building 40, Room 3092. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT:

COL Vicky Fogelman, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–913 Filed 1–23–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)
Date of Meeting: 24 & 25 January 1996
Time of Meeting: 0900–1100, 24 January 1996 (Closed)
1200–1600, 24 January 1996 (Open)
0930–1600, 25 January 1996 (Open)
Place: Pentagon—Washington, DC
Agenda: The Army Science Board's Ad Hoc Study on ''Army Digitization Information Systems Vulnerabilities and Security'' will meet for briefings and discussions relative to the study subject. The open portions of these meetings are open to the public. Any person may attend, appear before or file statements with the committee. The closed portion of these meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

FOR FURTHER INFORMATION CONTACT: Michelle Diaz (703) 695–0781.

Michelle P. Diaz,
Acting Administrative Officer, Army Science Board.

[FR Doc. 96–977 Filed 1–23–96; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)
Date of Meeting: 22 & 23 January 1996
Time of Meeting: 0900–1730, 22 January 1996
0900–1500, 23 January 1996
Place: Pentagon—Washington, DC

Agenda: The Army Science Board (ASB) TRADOC Issue Group on ''Operational Architecture'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings.

FOR FURTHER INFORMATION CONTACT: Michelle Diaz (703) 695–0781.

Michelle P. Diaz,
Acting Administrative Officer, Army Science Board.

[FR Doc. 96–978 Filed 1–23–96; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)
Dates of Meetings: 0900–1600, 17 January 1996
0800–1500, 18 January 1996
0900–1500, 18 January 1996
0900–1500, 19 January 1996
Places: US Army Aviation, Troop Support Command, Federal Center, St. Louis, MO (17 Jan 96)
US Army Tank Automotive Command, Warren, MI (18 Jan 96)
US Army Missile Command, Huntsville, AL (18 Jan 96)
US Army Communications & Electronics Command, Fort Monmouth, NJ (19 Jan 96)

Agenda: The Army Science Board (ASB) Independent Assessment Panel on ''Reengineering the Acquisition and Modernization Processes of the Institutional Army, T&E Subgroup'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings.

FOR FURTHER INFORMATION CONTACT: Michelle P. Diaz (703) 695–0781.

Michelle P. Diaz,
Acting Administrative Officer, Army Science Board.

[FR Doc. 96–979 Filed 1–23–96; 8:45 am]
BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)
Date of Meeting: 25–26 January 1996
Time of Meeting: 1000–1600, 25 January 1996
0800–1400, 26 January 1996
Place: Pentagon—Washington, DC

Agenda: The Army Science Board's (ASB) Independent Assessment on ''Reengineering the Acquisition and Modernization Processes of the Institutional Army'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings.

FOR FURTHER INFORMATION CONTACT: Michelle Diaz (703) 695–0781.

Michelle P. Diaz,
Acting Administrative Officer, Army Science Board.

[FR Doc. 96–980 Filed 1–23–96; 8:45 am]
BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Ashtabula River Partnership (ARP) Feasibility Study and Comprehensive Management Plan (CMP) and Development of a Dredging and Confined Disposal Facility (CDFs) Project for Ashtabula Harbor, Ashtabula County, OH

AGENCY: U.S. Army Corps of Engineers, DOD for the Ashtabula River Partnership.

ACTION: Notice of intent.

SUMMARY: The proposed project involves appropriate sediment dredging, dewatering, treatment, transport, and use of existing and/or developed confined disposal facilities (CDFs) for disposal of polluted material dredged from the Lower Ashtabula River. Material will be dredged for initial River clean-up and for continued maintenance of harbor navigation channels. Project CDFs will be designed and used initially for confining some initially dredged Toxic Substance Control Act (TSCA) sediments.

FOR FURTHER INFORMATION CONTACT: Tod Smith, 716–879–4175, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Section, 1776 Niagara Street, Buffalo, New York 14207–3199.

SUPPLEMENTARY INFORMATION:

Authority

This study is being conducted under the authorities of the U.S. Rivers and Harbors Acts from 1919 to 1965, as amended, as they pertain to Ashtabula Harbor; authorities associated with the Ashtabula River Partnership (ARP); and Section 401 of the 1990 Water Resources

Development Act pertaining to technical assistance to OEPA to develop ARP plans.

Proposed Action

The proposed action involves dredging (environmentally) approximately 750,000 cubic yards of contaminated material (approximately 300,000 cubic yards of which may be PCB TSCA) from the lower Ashtabula River and appropriate dewatering, treatment, transport and disposal in appropriately designed existing and/or developed confined disposal facilities (CDFs). Generally, contaminants of concern include metals such as chromium and lead and chlorinated organic compounds including PCBs in excess of 50 mg/kg. Some future disposal capacity for harbor operations and maintenance dredged material (not suitable for unrestricted open-lake disposal) will also be included.

Alternatives

The Ashtabula River Partnership and the U.S. Army Corps of Engineers, Buffalo District are investigating several associated alternative scenarios and have investigated some 36 sites for potential CDF development. The Project Siting Committee recently recommended that four upland sites, one in-lake CDF, and three existing landfill areas be assessed in further detail. The ''No Action'' alternative must also be a consideration.

Scoping Process

Study activities are being coordinated with government agencies, interest groups, and the general public. The intent is to gain assistance in: identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; assessing/evaluating alternative solutions; and identifying the preferred and the selected plans. The public involvement process for the study incorporates a public involvement (outreach) program, written correspondence, telephone communications, public meetings/workshops, and draft and final report review procedures.

An initial local scoping meeting for this project was conducted in January of 1994. Subsequent meetings followed. In June 1995, supplemental scoping letters were coordinated with agencies and others known to have an interest in the study. Coordination continues. Additional scoping input from potentially affected Federal, State, and local agencies and interests is invited by this notice.

Significant Issues

The Ashtabula River Partnership, comprised of private citizens, government officials, and business and industry leaders, is dedicated to exploring how to effectively remediate the contaminated sediments in the Ashtabula River and Harbor. The goal is to look beyond traditional approaches to determine a comprehensive solution for remediation of the contaminated sediments not suitable for open-lake disposal. Successful remediation of contaminated sediments in the Ashtabula River and Harbor will ultimately enhance economic, environmental, and social development opportunities in the Ashtabula region. Alternatives will be developed and evaluated for engineering and economic feasibility, and environmental and social acceptability. The alternative selected will reflect the best overall response to meeting the developed project objectives. The U.S. Army Corps of Engineers, Buffalo District has taken the leadership role as a Partnership's project manager to prepare its Comprehensive Management Plan and Environmental Impact Statement to address sediment remediation. The study shall be conducted to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Draft Environmental Impact Statement is completed, it will be filed with the U.S. Environmental Protection Agency and coordinated and reviewed under the National Environmental Policy Act procedures.

Scoping Meeting: Since Federal, State, and local interests have been involved with initiation of the study, and adequate coordination is already being conducted, no new formal initial scoping meeting is scheduled.

Availability

It is expected that the Draft Environmental Impact Statement will be made available to the public about October 1997.

Dated: January 2, 1996.

Walter C. Neitzke,

Colonel, U.S. Army, Commanding.

[FR Doc. 96–914 Filed 1–23–96; 8:45 am]

BILLING CODE 3710–6P–M

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Hospital, Long Beach, California, Parcel A

The Department of the Navy (Navy), pursuant to section 102(2) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and the Regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Parcel A of the property comprising the Naval Hospital at Long Beach, California.

Navy intends to dispose of the property in a manner that is consistent with the proposed reuse and redevelopment plan submitted by The City of Long Beach, the Local Redevelopment Authority (LRA), described as the Retail Sales Alternative in the Final Environmental Impact Statement (FEIS).

Background

The 1991 Defense Base Closure and Realignment Commission recommended closure of the Naval Hospital at Long Beach and Naval Station Long Beach. These recommendations were then approved by President Bush and the One Hundred Second Congress. Operations at the Naval Hospital ceased on March 31, 1994, and the property has been in caretaker status since that date. Operations at Naval Station Long Beach ceased on September 30, 1994.

The Naval Hospital property is located within The City of Long Beach, California, and consists of two parcels. Parcel A is a 30.5 acre site which contains the hospital buildings, associated barracks, and warehouses. Parcel B is an adjacent 34.7 acre site that contains a parking lot, helicopter landing pad, and Navy housing. Ownership of Parcel B reverted from Navy to The City of Long Beach on October 17, 1995, by operation of law under the terms of the original land acquisition agreement.

A Notice of Intent was published in the Federal Register on January 28, 1994, stating that Navy would prepare an Environmental Impact Statement that analyzed the impacts of disposal and reuse of Parcel A of the Naval Hospital property. A 90-day public scoping period was established, and two scoping meetings were held in the cities of Long Beach and Lakewood on April 5 and 6, 1995. An additional scoping meeting where Navy's presentation was translated into Spanish was held in the adjacent City of Hawaiian Gardens on July 19, 1994.

In February 1995, Navy distributed a Draft Environmental Impact Statement (DEIS) to Federal, State, and local agencies, elected officials, special interest groups, and interested persons. Navy held two public hearings on March 1 and 2, 1995, in Long Beach and the adjacent City of Lakewood. Navy had the Executive Summary of the DEIS translated into Spanish to facilitate participation in the NEPA process by the predominantly Hispanic population of Hawaiian Gardens. Federal agencies, California state agencies, local governments, and the general public submitted written and oral comments. These comments and Navy's responses were incorporated in the Final Environmental Impact Statement (FEIS), which was distributed to the public on August 18, 1995, for a review period that concluded on September 18, 1995.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for disposal and reuse of this Federal property. Navy's EIS process evaluated the environmental impacts of various proposed reuses that could result from disposal of the property. The City of Long Beach adopted a reuse plan for the Naval Hospital property that provided for development of the site as a retail shopping mall.

The scoping process identified more than thirty potential reuses which fell into eight categories. Navy determined that five of these categories, including the LRA's proposed reuse plan, constituted reasonable reuse alternatives. Each of these five ''action'' alternatives and the ''no action'' alternative were the subject of detailed environmental analyses. The process of narrowing the number of alternatives selected for detailed analysis from eight to six is set forth in Chapter One of the FEIS.

The six potential reuse alternatives considered in detail in the FEIS were: (1) Administrative use by the Los Angeles County Office of Education (LACOE). This alternative proposed rehabilitation of the existing hospital building and adjacent parking lots and consolidation of all LACOE offices on this site. (2) Health Care use as a Senior Health Care Center. This alternative proposed rehabilitation of the existing hospital building and adjacent parking lots for use as residential and non-residential care for senior citizens. (3) Retail use as retail stores. This alternative proposed demolition of existing buildings and construction of retail outlets and associated parking facilities. (4) Industrial use as an industrial park. This alternative proposed demolition of existing buildings and construction of a low profile industrial park with associated delivery terminals and employee parking. (5) Residential use as single family housing. This alternative proposed demolition of existing buildings and construction of single family homes at a density of ten units per acre. (6) No Action, leaving the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

Environmental Impacts

The potential impacts of each alternative were analyzed for their effects on land use, economics, environmental justice, traffic and transportation, aesthetics, recreation, public services, utilities, seismicity, biological resources, historic and archeological resources, water quality, air quality, noise, and hazardous materials. Each of the alternatives analyzed, except the ''no action'' alternative, has the potential for causing some adverse impact on traffic and air quality. This potential for adverse impacts on traffic and air quality arises from the additional motor vehicle traffic associated with each of the five ''action'' alternatives. Each of these ''action'' alternatives also has the potential for making a positive impact on the local economy. This potential for positive impacts arises from the new job opportunities and consumer spending associated with all five ''action'' alternatives.

Each proposed alternative, except the Senior Health Care Alternative, generated a significant adverse impact on traffic for part of the area around the Naval Hospital property. Specifically, the additional traffic associated with these proposals would cause some local intersections to operate below the levels of service established by the California Department of Transportation. These adverse impacts can be mitigated, however, by modifying the existing roadways and intersections.

Navy will not exercise control over the Naval Hospital property after it disposes of Parcel A. Thereafter, the property will be governed by local zoning regulations. Other than by imposing deed restrictions, Navy has no authority to restrict future use of the property or require future owners to take action to mitigate the effects of development, *e.g.*, to build or improve roads. Deed restrictions, however, are appropriate only when necessary to ensure that Federal statutory or regulatory obligations imposed on Federal agencies are satisfied, *e.g.*, the duty to preserve endangered species, historic structures, and wetlands.

There are no such underlying statutory or regulatory obligations associated with Parcel A. Therefore, deed restrictions would not be appropriate here. The FEIS, however, identified and discussed mitigation measures which could be implemented under State and local laws. Applying these prescriptions, the local government could require the entity that acquires the property to build or improve roads and intersections as a condition of gaining approval for any redevelopment plan.

Significant impacts on air quality were related to emissions generated by mobile sources, *i.e.*, the increased vehicular traffic associated with all ''action'' alternatives except the Senior Health Care Alternative. As discussed above, after conveyance, Navy does not possess the authority to mandate or control mitigation measures. Thus, to the extent that air quality impacts must be mitigated in order to maintain emission levels established by the local Air Quality Board, that mitigation will be administered by local regulators. These regulators could require the acquiring entity to implement mitigation measures developed by the local Air Quality Board before issuing construction permits or other necessary authorizations. Short term impacts on air quality would also occur during the demolition and construction phases of all five ''action'' alternatives, but these may be mitigated readily through the use of construction techniques demonstrably effective in Southern California.

The most environmentally significant consequence of implementing The City of Long Beach's proposed Retail Sales Alternative is the increase in traffic flow and congestion and the related effects on local air quality. Without mitigation, the Retail Sales Alternative would significantly affect six intersections on Carson Street between the Los Coyotes Diagonal and Norwalk Boulevard. However, the FEIS identified feasible mitigation measures that would accommodate present and projected future traffic flows, achieve and maintain acceptable service levels, and improve the traffic flow on Carson Street. California State and local authorities bear the responsibility for implementing these and any other appropriate mitigation measures.

Federal actions arising out of the transfer of land and facilities are exempt from compliance with the Clean Air Act General Conformity Rule, 40 CFR parts 51 and 93, when, as here, the Federal agency will not retain continuing

authority over the property. These actions, however, must comply with National Ambient Air Quality Standards (NAAQS) and the State Implementation Plan (SIP). Since vehicles will be the source of more than 98 percent of the project-related air emissions, mitigation measures that reduce traffic congestion would also reduce the impact on air quality. Implementation of the Retail Sales Alternative will require compliance with the California Environmental Quality Act, the SIP, and local air quality rules and regulations.

Implementation of the Retail Sales Alternative would not have any impact on historic or archeological resources. The State Historic Preservation Officer agrees with this finding.

In compliance with Executive Order 12898 concerning Environmental Justice, the potential environmental and economic impacts on minority and low income persons and communities were also assessed. Public notices, scoping meetings, and hearings to solicit comments on the DEIS were translated into Spanish to accommodate a local population of citizens who speak only Spanish. Generally, any impacts caused by the proposed development of Parcel A will be experienced equally by all groups within the overall regional population. However, employment opportunities created by the proposed development may favor lower income persons. It is not likely that the minority or low income population will experience disproportionately any adverse environmental, health, or economic impacts.

Comments Received on the FEIS

After the Final Environmental Impact Statement was distributed on August 18, 1995, Navy received seven comment letters. Three of these letters set forth the authors' preferences. Four letters presented comments regarding traffic mitigation measures, air quality, impacts on local schools, and the adequacy with which the Senior Health Care Alternative was treated in the FEIS. The comments did not raise any new issues concerning the potential problems associated with traffic congestion and did not identify or discuss any mitigation measures other than those described in the FEIS. The California Department of Transportation identified the property rights that must be transferred to undertake mitigation measures that would modify intersections and relocate traffic control devices.

The U.S. Environmental Protection Agency (EPA) expressed concern that Navy had identified the Retail Sales Alternative as the preferred alternative even though vehicular traffic arising out of the retail use would bear the greatest potential for affecting local air quality. EPA asked Navy to consider selecting an alternative with less potential for affecting air quality.

While Navy considered the environmental impacts of each proposed reuse alternative under NEPA, Navy also applied Federal statutory and regulatory standards governing the disposal of Federal property and the economic considerations mandated by the Defense Base Closure and Realignment Act of 1990 and the Department of Defense—s implementing Regulations in determining that the highest and best use of the Naval Hospital property was the proposed Retail Sales Alternative. Although this use has a higher potential for affecting local air quality, any retail development would be controlled by emission standards prescribed by California State and local air quality regulations. Thus, the local Air Quality Board could preclude development of the property unless the developer incorporates mitigation ensuring that local air quality standards are satisfied. In light of California's demonstrable record of seeking cleaner air for its citizens, there is no reason to conclude that appropriate mitigation measures will not be imposed on the development of this property.

The local school district reported that the creation of new jobs by the proposed retail use would produce a corresponding increase in school enrollments. The district expressed concern about a possible increase in enrollment, because the school district's budget and construction planning had not considered this possibility. Based upon the economic analysis in the FEIS, it is likely that new jobs created by the proposed Retail Sales Alternative will be filled largely by those already residing in the local area. Consequently, it is not likely that the local school district will experience any significant increase in new student enrollments.

Proponents of the proposed Senior Health Care Alternative expressed concern that this alternative had not been adequately considered in the FEIS. They asserted that the projected revenue for the Senior Health Care Alternative discussed in the EIS was understated and thus did not permit an accurate evaluation of its economic feasibility. Initially, economic information was relevant to the extent that the economic feasibility of a proposed alternative helped identify the range of alternatives that would be analyzed in detail. Once an alternative was selected for detailed analysis, however, the focus shifted from economic to environmental issues. The FEIS evaluated the environmental impacts associated with the proposed Senior Health Care Alternative in the same manner and to the same extent as other alternatives and adequately analyzed its environmental impacts.

Regulations Governing the Disposal Decision

Since the proposed action constitutes a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, selection of the proposed Retail Sales Alternative was based upon the environmental analysis in the FEIS and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DOD Rule), 32 CFR parts 90 and 91.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the highest and best use of the property. The FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values, and utilization factors such as zoning, physical characteristics, other private and public uses in the vicinity, former Government uses, access, roads, location and environmental considerations.

After Federal property is conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at §§ 101–47.1

through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the 1991 Defense Base Closure and Realignment process to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by section 2905 (b)(4) of the DBCRA, may Navy apply disposal procedures other than the FPMR's prescriptions.

In section 2901 of DBCRA, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In § 2905 of DBCRA, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. In particular, under § 2905(b)(2)(E), Navy must consult with the Local Redevelopment Authority before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in § 90.4 of the DOD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, e.g., reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, § 91.7(d)(3) of the DOD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The FPMR and DBCRA identify several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR § 101–47.303–2); by economic development conveyance (DBCRA § 2905(b)(4); by negotiated sale (FPMR § 101–47.304–8); and by competitive sale (FPMR § 101–47.304–7). The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The Retail Sales Alternative proposed by The City of Long Beach presents the highest and best use of Parcel A of the Naval Hospital property. The City of Long Beach, as the LRA, has determined in its proposed reuse and redevelopment plan that the property should be used for retail sales outlets. The adjacent land owned by The City of Long Beach (Parcel B) will also be used for development of the retail shopping mall. Environmental impacts can be mitigated through State and local processes. The property's physical characteristics are suited to commercial development. The Retail Sales Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of base closure, and is consistent with President Clinton's Five Point Plan, which emphasizes job creation and economic development as the means to revitalize base closure communities.

If only environmental considerations were determinative, the proposal with the least potential for adverse environmental impacts would be the Senior Health Care Alternative. This alternative, however, does not constitute the highest and best use of the Naval Hospital property. While the Senior Health Care proposal presents a reasonable reuse which could benefit residents of the local community, this alternative does not provide for the highest and best use of the property because it is not compatible with the LRA's proposed reuse and redevelopment plan; it is not consistent with the proposed use of adjacent property; and it would not foster rapid economic recovery for this base closure community through redevelopment of the closing military installation and job creation.

The decision to dispose of the Naval Hospital property in a manner consistent with the LRA's proposed plan also has the effect of denying the Los Angeles County Office of Education's (LACOE) request, certified by the U.S. Department of Education, that Navy convey Parcel A to LACOE at no cost as a Public Benefit Conveyance. Public Benefit Conveyances are initiated through a request to the sponsoring agency, here the U.S. Department of Education, which was responsible for validating LACOE—s request. Navy, as the disposing Federal agency, evaluated this request in light of the requirement that its disposal constitute the highest and best use of the property.

The use proposed by LACOE does not constitute the highest and best use of the Naval Hospital property. While consolidation of LACOE's offices to a single location could provide some benefit to the local community by making LACOE's operations more cost effective, it would not foster the rapid economic recovery, job creation and redevelopment for this base closure community that Congress mandated in DBCRA. Most of the jobs associated with consolidation of LACOE's offices would be moved to Long Beach from several nearby communities and would not constitute new jobs that could help offset those lost as a result of base closure. Additionally, the LACOE Alternative is not compatible with the LRA's proposed reuse and redevelopment plan and is not consistent with the proposed use of adjacent property.

Questions regarding the Final Environmental Impact Statement prepared for this action may be directed to Ms. Jo Ellen Anderson (Code 232JA), Naval Facilities Engineering Command, Southwest Division, 1220 Pacific Coast Highway, San Diego, CA 92132–5190; Telephone (619) 532–3912.

Dated: December 22, 1995.

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy (Installations and Environment).

[FR Doc. 96–981 Filed 1–23–96; 8:45 am]

BILLING CODE 3810–FF–P

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee will meet on January 30, 1996, at the Office of Naval Research, 800 North Quincy Street, Room 915, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:30 p.m. on January 30, 1996. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide briefings for the Committee related to the ''Smart Ship'' initiative and other current technology challenges and issues facing the Department of the Navy; perspectives and guidance from the recently appointed Assistant Secretary of the Navy (Research, Development and Acquisition); status of on-going studies; and future Committee study topics and membership.

For further information concerning this meeting contact:Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217-5660,Telephone Number: (703) 696-4870.

Dated: January 11, 1996

S. K. Melancon,

Paralegal Specialist, Alternate Federal Register Liaison Officer.

[FR Doc. 96–912 Filed 1–23–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 23, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Family Literacy Migrant Education Even Start Program.
Frequency: Annually.
Affected Public: Not for Profit institutions; State, Local, Tribal Governments; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 60.
Burden Hours: 2700.
Abstract: The Migrant Education Even Start Program (MEES) is designed to help break the cycle of poverty and improve literacy by integrating early childhood education, adult literacy or adult basic education, and parenting into a unified literacy program for migrant families.

Office of Postsecondary Education

Type of Review: Regular.
Title: Performance Report for the Training Program for Federal TRIO Programs.
Frequency: Annually.
Affected Public: Not for Profit Institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 12.
Burden Hours: 48.
Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating projects for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Reporting and Recordkeeping Requirement for Douglas School & Stafford/Plus Loans.
Frequency: Annually.
Affected Public: Individual or households; State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 4308.
Burden Hours: 1077.
Abstract: Collection of state proposals for Targeted Teacher Deferment/Teacher Shortage Areas, of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Family Education Loan Program Application Documents.
Frequency: One Time.
Affected Public: Individual or households; Business or other for-profit; not for Profit institutions.
Annual Reporting and Recordkeeping Hour Burden.
Reporting Burden:
Responses: 100,000.
Burden Hours: 50,000.
Abstract: These forms are the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan.

Office of Postsecondary Education

Type of Review: Existing.
Title: Federal Stafford Loan, (subsidized and unsubsidized) Program Application Documents.
Frequency: One Time.
Affected Public: Individual or households; Business or other for-profit.
Annual Reporting and Recordkeeping Hour Burden.
Reporting Burden:
Responses: 2,800,000.
Burden Hours: 1,400,000.
Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Stafford Loan and a school, lender, and guaranty agency determine a borrower's eligibility to receive a Stafford loan.

Office of Postsecondary Education

Type of Review: Existing.

Title: Federal Family Education Loan Program Deferment Documents.
Frequency: On Occasion.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-Profit institutions.
Reporting Burden and Recordkeeping:
Responses: 1,148,818.
Burden Hours: 183,811.
Abstract: These forms are the means by which a borrower applies for a deferment of repayment of the principal balance on a loan and the lender or loan servicer determines whether a borrower is entitled to a specific type of deferment (postponement).

[FR Doc. 96–982 Filed 1–23–96; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 25, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRBed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Department review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Gloria Parker,
Director, Information Resources Group.

Office of Education Research and Improvement

Type of Review: Reinstatement.
Title: Application for Basic Grants under the Library Services for Indian Tribes and Hawaiian Natives Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't SEAs or LEAs
Reporting and Recordkeeping Hour Burden:
Responses: 230.
Burden Hours: 460.
Abstract: This form allows Indian Tribes and Hawaiian Natives to apply for Basic grants under Section 403 of the Library Services for Indian Tribes and Hawaiian Natives Program, Title IV of the Library Services and Construction Act, as amended.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Application for Special Projects grants under the Library Services for Indian Tribes and Hawaiian Natives Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 75
Burden Hours: 600.
Abstract: This form allows Indian Tribes to apply for Special Projects grants under Section 404 of the Library Services for Indian Tribes and Hawaiian Natives Program, Title IV of the Library Services and Construction Act, as amended.

Office of the Under Secretary

Type of Review: New.
Title: Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program Customer Survey.
Frequency: On Time.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 820.
Burden Hours: 274
Abstract: The Department of Education is charged with evaluating the effectiveness of the Regional Consortium in meeting the needs of schools, teachers, and administrators. This survey will respond to that charge by collecting opinions about the quality and effectiveness of Consortium sponsored activities and documents in three major categories: professional development, support for teams and networks, and dissemination of information on promising practices. Respondents will be a random sample of customers at Consortium activities and services.

Office of Management

Type of Review: New.
Title: Department of Education Federal Policy for the Protection of Human Subjects Compliance Form and Related Instruments.
Frequency: On Occasion.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 860.
Burden Hours: 1,137.
Abstract: The Compliance Form and related instruments are used by institutions and individuals to provide a record of their compliance with the Department of Education regulations for the protection of human subjects.

Office of Management

Type of Review: New.

Title: Instructions to Applicants/ Offerors on the Protection of Human Subjects.

Frequency: On Occasion.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 24,278.

Burden Hours: 1,395.

Abstract: The instructions to grant applicants notify applicants of the Federal requirements for the Protection of Human Subjects and require them to provide certain information on any planned research activities involving human subjects. The instructions to offerors instruct offerors to provide certain information about planned research activities involving human subjects.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fiscal Operations Report and Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Programs.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions, State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 4,800.

Burden Hours: 80,131.

Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1997–98 Award Year. The Fiscal operations report data will be used to assess program effectiveness, account for funds expended during the 1995–96 Award Year, and as part of the institution funding process.

[FR Doc. 96–983 Filed 1–23–96; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice of information collection activity.

SUMMARY: This amends the notice of an information collection activity of the National Assessment Governing Board published in Vol. 60, No. 240, Page 65642.

FOR FURTHER INFORMATION CONTACT: Susan Cooper Loomis, NAEP ALS Project Director, American College Testing, 2201 North Dodge Street, Iowa City, Iowa 52243.

SUPPLEMENTARY INFORMATION:

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: January 19, 1996.

Roy Truby,

Executive Director.

[FR Doc. 96–1045 Filed 1–23–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–522–000, et al.]

Dayton Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

January 17, 1996.

Take notice that the following filings have been made with the Commission:

1. Dayton Power Light Company

[Docket No. ER96–522–000]

Take notice that on December 18, 1995, Public Service Company of Colorado (Public Service) tendered for filing an Application for Authorization to Exchange/Acquire Transmission Facilities. Public Service states that the purpose of this filing is to engage in three separate transactions: an exchange with the Western Area Power Administration (Western) of a substation and a portion of a 115 kV transmission line for one circuit of another 115 kv double circuit transmission line; the acquisition by Public Service of a portion of a 69 kV transmission line from Intermountain Rural Electric Association, Inc; and the acquisition by Public Service of an undivided 25 percent share of the use and benefits of the transformation capacity of Western's Waterflow Substation.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER96–686–000]

Take notice that on December 26, 1995, PECO Energy Company (PECO) filed a Service Agreement dated December 12, 1995, with Allegheny Power Service Corporation, as agent for and on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (APS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds APS as a customer under the Tariff.

PECO requests an effective date of December 12, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to APS and to the Pennsylvania Public Utility Commission.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER96–687–000]

Take notice that on December 26, 1995, PECO Energy Company (PECO) filed a Service Agreement dated December 13, 1995, with Sonat Power Marketing, Inc. (SPM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SPM as a customer under the Tariff.

PECO requests an effective date of December 13, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to SPM and to the Pennsylvania Public Utility Commission.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Northwest Power Marketing Company, L.L.C.

[Docket No. ER96–688–000]

Take notice that on December 26, 1995, Northwest Power Marketing Company, L.L.C., filed a petition for approval of market-based rates.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas City Power & Light Company

[Docket No. ER96–689–000]

Take notice that on December 26, 1995, Kansas City Power & Light Company (KCPL), tendered for filing Amendatory Agreement No. 3 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Slater, Missouri, dated December 6, 1995, and associated Service Schedule. KCPL states that the Amendatory Agreement revises the Agreement pursuant to KCPL's Open Season.

KCPL request waiver of the Commission's notice requirements.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

Docket No. ER96–690–000

Take notice that on December 26, 1995, Western Resources, Inc. (Western Resources) tendered for filing a Fourth Revised Exhibit B to the Electric Power, Transmission and Service Contract between Western Resources and Kansas Electric Power Cooperative, Inc. (KEPCo). Western Resources states the filing is to update Exhibit B to reflect the installation of the Postoria point of delivery. This filing is proposed to become effective December 28, 1995.

A copy of this filing was served upon KEPCo and the Kansas Corporation Commission.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

Docket No. ER96–691–000

Take notice that on December 26, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for Montana Rate Schedule FERC No. 219, a Unit Contingent Capacity and Associated Energy Sales Agreement, dated February 6, 1995, between Montana and Associated Power Services, Inc. (APSI).

A copy of the filing was served upon APSI.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

Docket No. ER96–692–000

Take notice that on December 26, 1995, Entergy Services, Inc. (ESI), acting as agent for Arkansas Power & Light Company (AP&L), submitted for filing the First Amendment to the Agreement for Wholesale Power Service between Farmers Electric Cooperative Corporation and AP&L which provides for a change to the maximum capacity provided at various points of delivery under such Agreement. Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the First Amendment to become effective January 1, 1996.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

Docket No. ER96–693–000

Take notice that on December 26, 1995, Entergy Services, Inc. (ESI), acting as agent for Mississippi Power & Light Company (MP&L), submitted for filing two Agreements for the establishment of additional points of delivery between MP&L and South Mississippi Electric Power Association (SMEPA) under the Interconnection Agreement between MP&L and SMEPA. Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the Agreements to become effective October 3, 1995.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1057 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL96–24–000, et al.]

Pennslyvania Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 16, 1996.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Electric Company

[Docket No. EL96–24–000]

Take notice that on December 18, 1995, Pennsylvania Electric Company (Penelec) tendered for filing a request for waiver from Sections 35.14 and 35.19a of the Commissions Regulations to allow Penelec to pass back to its wholesale customers certain refunds, including interest, in accordance with the proposed refund plan described in its filing.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. EL96–26–000]

Take notice that on December 22, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a petition under the Public Utility Regulatory Policies Act of 1978, section 210(h)(2)(B). In this Petition, Niagara Mohawk asks the Commission to bring an enforcement action against the Public Service Commission of the State of New York (PSC) to bar the PSC from enforcing 1991 New York Sessions laws ch. 166, section 149–B, insofar as that New York statute purports to require utilities including Niagara Mohawk to reimburse PURPA-qualifying facilities (Qfs) for certain gas tax payments. Niagara Mohawk contends that the New York tax reimbursement statute is preempted by PURPA because it purports to require utilities to pay Qfs in excess of avoided costs, and because it employs a cost-of-service methodology rather than the avoided cost methodology that PURPA requires in setting the rates that utilities must pay to Qfs.

Niagara Mohawk has served a copy of the filing on the PSC.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf Power Company

[Docket No. EL96–27–000]

Take notice that on December 29, 1995, Gulf Power Company (Gulf) requested a waiver of the Commission's fuel adjustment clause regulations to the extent necessary to permit the recovery, through a fuel adjustment clause applicable to jurisdictional customers,

of a proportionate share of the cost associated with the buyout of a long-term coal supply agreement. Gulf states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the cumulative amortization of the associated buyout costs. Gulf proposes to recover such amortized buyout costs through the fuel cost recovery mechanism in its tariff. The waiver is requested to be effective as of January 1, 1996.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric

[Docket No. EL96–28–000 Company]

Take notice that on December 29, 1995, Pacific Gas and Electric Company tendered for filing a petition for waiver of requirement for filing within three years of rate change for recovery of costs for post-employment benefits other than pensions.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER95–1469–001]

Take notice that Central Illinois Light Company (CILCO), on December 11, 1995, tendered for filing its refund report in the above-referenced docket.

Comment date: January 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER95–1640–001]

Take notice that on December 8, 1995, Delmarva Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER96–98–000]

Take notice that on December 8, 1995, Nevada Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96–268–000]

Take notice that on December 21, 1995, Illinois Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. International Utility Consultants Inc.

[Docket No. ER96–594–000]

Take notice that on December 26, 1995, International Utility Consultants, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–665–000]

Take notice that on December 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Cenergy, Inc., dated December 19, 1995. This Service Agreement specifies that Cenergy, Inc. has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Cenergy, Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 19, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–666–000]

Take notice that on December 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Phibro, Inc. (Phibro) dated December 1, 1995. This Service Agreement specifies that Phibro has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–7091–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date December 1, 1995 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on Phibro.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–667–000]

Take notice that on December 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Tenneco Energy Marketing Company, (Tenneco), dated December 12, 1995. This Service Agreement specifies that Tenneco has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff), designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Tenneco to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 12, 1995, for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER96–668–000]

Take notice that on December 22, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service agreement between National Gas & Electric L.P. and Virginia Power, dated December 6, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to National Gas & Electric L.P. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Oklahoma Gas and Electric Company

[Docket No. ER96–669–000]

Take notice that on December 22, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing revised Electric Service Agreement for the City of Watonga, Oklahoma a wholesale municipal customer served under OG&E's WM–1 Firm Power Rate Schedule which is part of OG&E's FERC Electric Tariff 1st Revised Volume No. 1.

Copies of this filing have been sent to the affected customer, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Generating Company

[Docket No. ER96–670–000]

Take notice that on December 22, 1995, Allegheny Power Service Corporation, as agent for Allegheny Generating Company, tendered for filing a request to lower the return on equity component of its cost of service formula rates. The proposed effective date for the decreased rates is January 1, 1996. Copies of the filing have been provided to the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, the Ohio Public Utilities Commission and all parties of record.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Alabama Power Company

[Docket No. ER96–671–000]

Take notice that on December 22, 1995, Alabama Power Company (APCo), tendered for filing Amendment No. 5 to the Interconnection Agreement between APCo and Alabama Electric Cooperative, Inc. (AEC), together with a new Service Schedule UP (Unit Peaking Capacity) from APCo to AEC and a related Off-System Generation Agreement. Under the service schedule, APCo would make available and AEC would purchase certain peaking capacity during the period January 1, 1996 through December 31, 1997, at which time the service schedule expires and terminates. AEC is entitled to schedule the capacity in accordance with its needs, but utilization cannot exceed a twelve percent (12%) capacity factor during the stated periods. The service schedule provides for a monthly capacity charge and an energy charge, with transmission service being provided under a pre-existing arrangement. This new service schedule is added to and incorporated in the existing Interconnection Agreement through Amendment No. 5, thereby facilitating transactions pursuant to the other terms and conditions governing the parties' interconnected operations.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–672–000]

Take notice that on December 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Industrial Energy Applications, Inc., dated November 28, 1995. This Service Agreement specifies that Industrial Energy Applications, Inc. has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Industrial Energy Applications, Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 28, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Canal Electric Company

[Docket No. ER96–673–000]

Take notice that on December 22, 1995, Canal Electric Company, tendered for filing proposed changes in its Rate Schedules Nos. 1, 2, 3, 4, 17 and 21 for recovery of costs arising out of Canal's recognition (consistent with SFAS No. 106) of post retirement benefits other than pensions (PBOP) on an accrual basis, commencing with calendar year 1993. Canal seeks authority to collect deferred PBOPs accrued for the years 1993 through 1995 and to bill in the future on an accrual basis under the foregoing rate schedules.

Copies of the limited Section 205 filing were served upon Canal Electric's jurisdictional customers under these rate schedules and the Massachusetts Department of Public Utilities.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Minnesota Power & Light Company

[Docket No. ER96–674–000]

Take notice that on December 22, 1995, Minnesota Power & Light Company (Minnesota Power), 30 West Superior Street, Duluth, Minnesota 55802, tendered for filing, pursuant to 205 of the Federal Power Act and Part 35 of the Commission's Rules and Regulations, an abbreviated filing for a change in rates, under its Rate Schedule Nos. 100, 104, 106, 107, 119, 120, 121, 123, 124, 125, 126, 127, 128, 133, 150, 164, 165. The proposed changes would result in an overall decrease in revenues from jurisdictional customers.

Minnesota Power states that the change in rates is primarily to recover accrued Post Employment Benefits Other than Pensions resulting from Minnesota Power's adoption of Financial Accounting Standards No. 106, in accordance with the Commission's Post Employment Benefits Other Than Pensions,

Statement of Policy and changes in other costs. Minnesota Power requests an effective date of January 1, 1996 for the proposed change in rates.

Copies of this filing were served upon Minnesota Power's jurisdictional customers and the Minnesota Public Utility Commission and Public Service Commission of Wisconsin.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Calpine Newark Cogen, Inc.

[Docket No. ER96–675–000]

Take notice that on December 22, 1995, Calpine Newark Cogen, Inc. (Calpine Newark), tendered for filing an initial rate schedule with the Federal Energy Regulatory Commission. Pursuant to the initial rate schedule, Calpine Newark proposes to make sales of power at wholesale in accordance with a Power Purchase Agreement, dated March 10, 1986, as amended, and the Third Amendment to Power Purchase Agreement between Calpine Newark and Jersey Central Power & Light Company (JCP&L) dated November 30, 1995.

Calpine Newark respectfully requests waiver of the Commission's 60-day prior notice requirement (18 CFR 35.11 (1995)). Calpine Newark requests waiver of the filing requirements contained in Parts B and C of 18 CFR Part 35 (except sections 35.12(a), 35.13(b), 35.15 and 35.16). Finally, Calpine Newark requests (1) Waiver of Parts 41, 101, and 141 of the Commission's regulations, (2) waiver of the full requirements of Part 45 of the Commission's regulations, with an abbreviated filing required instead, and (3) blanket approval under Part 34 of all future issuances of securities and assumptions.

Copies of the filing were served upon JCP&L.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Calpine Parlin Cogen, Inc.

[Docket No. ER96–676–000]

Take notice that on December 22, 1995, Calpine Parlin Cogen, Inc. (Calpine Parlin), tendered for filing an initial rate schedule with the Federal Energy Regulatory Commission. Pursuant to the initial rate schedule, Calpine Parlin proposes to make sales of power at wholesale in accordance with the Amended and Restated Agreement for Purchase and Sale of Electric Power between Calpine Parlin and Jersey Central Power & Light Company (JCP&L), dated November 30, 1995.

Calpine Parlin respectfully requests waiver of the Commission's 60-day prior notice requirement (18 CFR 35.11 (1995)). Calpine Parlin requests waiver of the filing requirements contained in Parts B and C of 18 CFR Part 35 (except sections 35.12(e), 35.13(b), 35.15 and 35.16). Finally, Calpine Parlin requests (1) Waiver of Parts 41, 101, and 141 of the Commission's regulations, (2) waiver of the full requirements of Part 45 of the Commission's regulations, with an abbreviated filing required instead, and (3) blanket approval under Part 34 of all future issuances of securities and assumptions.

Copies of the filing were served upon JCP&L.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Union Electric Company and Central Illinois Public Service Company

[Docket No. ER96–677–000]

Take notice that on December 22, 1995, Union Electric Company (UE) and Central Illinois Public Service Company (CIPS), tendered for filing with the Commission their Point-to-Point Transmission Service Tariff and Network Integration Service Tariff. The two tariffs are based on the *pro forma* tariffs included in the Commission's Open Access Notice of Proposed Rulemaking.

UE and CIPS state that they are making this filing in connection with a proposed combination between UE and CIPS. The tariffs are proposed to become effective upon the consummation of the combination and, therefore, UE and CIPS request waiver of the Commission's 120-day notice requirement contained in 18 CFR 33.3. By the tariffs, the combined companies will offer non-discriminatory point-to-point and network transmission service on a system-wide basis.

Copies of the filing have been served on the Missouri and Illinois state utility commissions.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–678–000]

Take notice that on December 22, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Supplemental No. 3 to the Power Supply Agreement between Ohio Edison and Potomac Electric Power Company (FERC Rate Schedule No. 153). This supplemental rate schedule will enable Ohio Edison to recover incremental SFAS costs consistent with the Commission's Policy Statement in Docket No. PL93–1–000.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER96–680–000]

Take notice that on December 26, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Commonwealth Edison Company.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER96–681–000]

Take notice that on December 26, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Aquila Power Corporation.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Wisconsin)

[Docket No. ER96–682–000]

Take notice that on December 26, 1995, Northern States Power Company, Eau Claire, Wisconsin (NSPW), tendered for filing the following document:

A Power and Energy Supply Agreement by and between the City of Medford, Wisconsin, and NSPW dated December 19, 1995. The City currently purchases power and energy from NSPW under a power supply agreement dated September 1, 1997, as amended on March 19, 1991. The 1977 agreement as amended is superseded by the 1995 agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Medford.

NSPW requests an effective date of January 1, 1996. NSPW states that under this new agreement, the City of Medford will be entitled to a 3% discount from NSPW's currently effective W–1 rate.

A copy of the filing was served upon the City of Medford and the State of Wisconsin Public Service Commission.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Madison Gas and Electric Company

[Docket No. ER96–683–000]

Take notice that on December 26, 1995, Madison Gas and Electric

Company (MGE), tendered for filing a service agreement with Valero Power Services Company under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER96–684–000]

Take notice that on December 26, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Electric Tariff, Volume 1, Service Agreement No. 23.

Wisconsin Electric requests an effective date of December 15, 1995, in order to implement the Agreement's modifications, which do not result in revenue increases.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. PacifiCorp

[Docket No. ER96–685–000]

Take notice that on December 26, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Long-Term Power Sale and Exchange Agreement (Agreement) between PacifiCorp and the City of Redding (Redding) dated December 6, 1995.

Under the Agreement, PacifiCorp will deliver 50 megawatts of firm capacity and associated energy to Redding through November 30, 2000. Commencing December 1, 2000, the Agreement converts to a seasonal power exchange that continues through November 30, 2015.

Copies of this filing were supplied to Redding, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. E. Craig Wall, Jr.

[Docket No. ID–2928–000]

Take notice that on December 21, 1995, E. Craig Wall, Jr. (Applicant) filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—South Carolina Electric & Gas Company
Director—South Carolina Generating Company, Inc.
Director—NationsBank Corporation

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. David O. Maxwell

[Docket No. ID–2931–000]

Take notice that on January 2, 1996, David O. Maxwell, (Applicant) filed an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Potomac Electric Power Company
Director—Salmon Inc.

Comment date: January 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Mid-Georgia Cogen, L.P.

[Docket No. QF96–26–000]

On December 29, 1995, Mid-Georgia Cogen, L.P. (Applicant), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Houston County, Georgia, and will consist of two combustion turbine generators, two unfired heat recovery boilers, one back pressure steam turbine generator, and an extraction/condensing steam turbine generator. Steam recovered from the facility will be sold to Frito-Lay, Inc. for space and water heating, and for frying and cooking food. The power output of the facility will be sold to Georgia Power Company. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be approximately 296 MW. Construction of the facility is scheduled to begin on March 1, 1996.

Comment date: Thirty days after the date of publication of this notice in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

33. Union Electric Company and Central Illinois Public Service Company

[Docket Nos. EC96–7–000 and ER96–679–000]

Take notice that on December 22, 1995, Union Electric Company (UE) and Central Illinois Public Service (CIPS) (collectively, the Applicants) filed a joint application pursuant to Sections 203 and 205 of the Federal Power Act and the Federal Energy Regulatory Commission's applicable regulations seeking authorization and approval of a strategic alliance between the Applicants under a common holding company, Ameren Corporation (Ameren), a corporation newly incorporated in the State of Missouri.

Applicants further request findings that the System Support Agreement and Joint Dispatch Agreement are just and reasonable and an order allowing them to become effective as of completion of the transaction resulting in the holding company structure. Additionally, Applicants seek approval of the proposed regulatory accounting treatment of a shared savings plan and cost recovery mechanism, and certain approvals as to UE's decommissioning fund.

UE is a combination electric and gas utility operating in Missouri and west central Illinois. CIPS is a combination electric and gas utility operating in Illinois and is a wholly owned subsidiary of CIPSCO, Inc. (CIPSCO). Pursuant to the Merger Agreement, CIPSCO will be merged into Ameren, with Ameren as the surviving entity. CIPS and other-non-utility subsidiaries of CIPSCO will, thus, become wholly owned subsidiaries of Ameren. UE will be merged with and into Arch Merger, Inc., a corporation newly incorporated in the State of Missouri as a wholly-owned subsidiary of Ameren,, with UE as the surviving corporation. UE will thus become a wholly-owned subsidiary of Ameren. In addition, UE will transfer to CIPS certain of its Illinois electric and gas public utility facilities.

On January 5, 1996, UE tendered for filing additional information to its December 22, 1995, filing in the above-referenced dockets.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1058 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1951–000 Georgia]

Georgia Power Company; Notice of Availability of Draft Environmental Assessment

January 18, 1996.

By letter to the Commission dated November 19, 1993, Georgia Power Company proposed to prepare and file an environmental assessment with their license application for the Sinclair Hydroelectric Project, as provided for by the Energy Policy Act of 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applicant prepared environmental assessment and application for major license for the existing Sinclair Hydroelectric Project, located on the Oconee River, Baldwin County, Georgia, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426.

Please reference Project No. 1951–000 to all comments. For further information, please contact Ms. Kelly Fargo, Environmental Coordinator, at (202) 219–0231.

Lois D. Cashell,

Secretary.

[FR Doc. 96–929 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Tendered for Filing With the Commission

January 18, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License

b. Project No.: P–11566–000

c. Date Filed: December 12, 1995

d. Applicant: Consolidated Hydro Maine, Inc.

e. Name of Project: Damariscotta Mills Hydro Project

f. Location: On the Damariscotta River in Lincoln County, near Newcastle, Nobleboro, and Jefferson, Maine

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a) 825(r)

h. Applicant Contact: Mr. Wayne E. Nelson, Consolidated Hydro Maine, Inc., Director of Environmental Affairs, Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, (508) 681–1900

i. FERC Contact: Ed Lee (202) 219–2809

j. Comment Date: Within 60 days of the notice issuance

k. Description of Project:

The existing project would consists of: (1) an existing concrete dam and intake structure; (2) an existing 4625–acre reservoir; (3) a powerhouse containing a single generating unit having an installed capacity of 460 Kw; (4) a 100-foot-long and 12.47-Kv underground transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,830 Mwh for the project. All lands and project works are owned by the applicant.

l. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 C.F.R. 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's Regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the comment date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 96–939 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2354–018, et al.]

Georgia Power Company, et al.; Notice of Extensions of Time

January 19, 1996.

The following is a list of Hydroelectric Projects for which the Commission has decided to extend the dates for the filing of comments due to the recent Government furlough and the extreme weather conditions in the Northeast United States.

Lois D. Cashell,

Secretary.

Project	Issue	Issuance date	Date expires	New date
North Georgia, P–2354–018	DEIS comments	10/27/95	12/28/95	1/27/96
Bliss, P–1975–014	Tendering (additional studies)	1/4/96	2/19/96	3/20/96
Lower Salmon Falls, P–2061–004	Tendering (additional studies)	1/4/96	2/19/96	3/20/96
Upper Salmon Falls, P–2777–007	Tendering (additional studies)	1/4/96	2/19/96	3/20/96
Snake Creek, P–1994–004	Tendering (additional studies)	11/25/95	1/16/96	2/15/96
West Hill, P–11564	Tendering (additional studies)	12/18/95	1/28/96	2/27/96
Therm II, P–11565	Tendering (additional studies)	12/18/95	1/30/96	3/1/96
Hasley Forebay, P–11560	Application for Preliminary Permit	11/9/95	1/18/96	2/17/96
Old Harbor, P–11561	Application for Preliminary Permit	11/9/95	1/18/96	2/17/96
Icy Gulch, P–11562	Application for Preliminary Permit	11/9/95	1/18/96	2/17/96
Upper Monroe, P–1517–008	Scoping	11/20/96	1/19/96	2/18/96
Flambeau DEIS; Big Falls, P–2390; Pixley, P–2395; Lower, P–2421; Crowley, P–2473; Thornapple, P–2475; Upper, P–2640.	DEIS Comments	12/8/95	2/6/95	3/7/96
	10(j)	12/4/95	2/19/96	3/20/96
	Section 7	12/4/96	1/3/96	2/19/96
Irving Dam, P–11516	Intervenor	12/15/95	2/13/96	3/14/96

Project	Issue	Issuance date	Date expires	New date
Middleville, P–11120	Intervenor	12/15/95	2/13/96	3/14/96
Lower Androscoggin DEIS; Gulf Island, P–2283; Marcal, P–11482.	DEIS Comments	12/8/95	1/22/96	2/21/96
	10(j)	12/1/95	2/14/96	3/15/96
	Section 7	12/1/95	1/2/96	2/19/96
Boyd Dam, P–11072	Intervenor	12/12/95	2/12/96	3/11/96
	Scoping Comments	12/13/95	1/12/96	2/12/96
Carlyle Dam, P–11214–001	Public Notice	11/20/95	1/22/96	2/22/96
Gainer Dam, P–11282–001	Notice Seeking Studies	12/18/95	1/20/96	2/20/96
Inglis Lock By-Pass, P–10893–002	Public Notice	10/27/95	12/26/95	1/26/95
P–1962–000, Rock Creek Cresta	REA	12/29/95	2/16/96	3/18/96
Menominee River Basin; P–2433–004, Grand Rapids; P–2357–003, White Rapids; P–2394–006, Chalk Hill; P–2536–009, LIttle Quinnesec Falls.	DEIS	12/1/95	1/16/96	2/15/96
P–460–001, Cushman	DEIS	12/15/95	2/13/96	3/14/96
P–1988–007, Haas-Kings River	DEA	11/30/95	1/16/96	2/15/96
P–11557, Coleman Ranch	Application for Preliminary Permit	11/1/95	1/11/96	2/11/96
P–1864–003, Bond Falls	Scoping Document I	12/5/95	1/31/96	3/1/96

[FR Doc. 96–1059 Filed 1–23–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–122–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

January 16, 1996.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP96–122–000]

Take notice that on December 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–122–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Centana Interstate Pipeline Company (Centana) the Sabine Line 14–F Facilities in Jefferson County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon the facilities which comprises 28.64 miles of 10-inch diameter pipeline, a compressor station, and associated meter stations, at the net book value at the time of closing, due to its underutilization.

Comment date: February 6, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. NorAm Gas Transmission Corporation

[Docket No. CP96–105–000]

Take notice that on December 15, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed with the Commission in Docket No. CP96–105–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of Commission's Regulations for authority to abandon by sale and transfer to NorAm Field Services Corporation (NFS) certain certificated facilities located in the state of Oklahoma, all as more fully set forth in the application which is on file with the the Commission and open to public inspection.

Specifically, NGT proposes to abandon and transfer to NFS, at net book value at the time of closing, certain gas supply facilities designated as the Line O-West and Quinton facilities consisting of approximately 106 miles of 6-inch to 16-inch diameter pipe, 6860 horsepower of compression at two compressor stations, and appurtenant facilities. NGT also seeks determination that once conveyed, these facilities will be gathering facilities exempt from the Commission's jurisdiction.

Comment date: February 6, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP96–124–000]

Take notice that on December 28, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–124–000 an application pursuant to Section 7 of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement natural gas storage facilities, and an order granting abandonment of the existing facilities being replaced, all as more fully set forth in the application which is on file with the the Commission and open to public inspection.

Specifically, Columbia requests authorization under Sections 7(c) and 7(b) of the Natural gas Act to construct and operate approximately 1.0 mile of 12-inch storage pipeline, replacing by abandonment 1.0 mile of 8-inch storage pipeline, in the Glady Storage Field, Pocahontas County, West Virginia.

Columbia does not request authorization for any new or additional service through the replacement facilities, which have an estimated cost of $1,028,900.

Comment date: February 6, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Centana Intrastate Pipeline Company

[Docket No. CP96–131–000]

Take notice that on December 29, 1995, Centanna Interstate Pipeline Company (CIPCO) P.O. Box 1642, Houston, TX 77251–1642, filed in Docket No. CP96–131–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2), for a declaratory order disclaiming Commission jurisdiction over certain facilities and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIPCO seeks a declaratory order from the Commission finding that the acquisition of Texas Eastern's Sabine Line 14–F, the Compressor Station, and associated meter stations located wholly within the State of Texas, and the ownership and operation of those facilities by CIPCO is not subject to the jurisdiction of the Commission under the Natural Gas Act.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the petition for declaratory order shall also be due on February 6, 1996.

5. Florida Gas Transmission Company

[Docket No. CP96–132–000]

Take notice that on January 4, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–132–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate an existing meter station as a jurisdictional facility, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to operate an existing meter station as a jurisdictional facility under 7(c) of the NGA for the purpose of transporting and delivering natural gas for Alabama Electric Cooperative, Inc. and Southeast Alabama Gas District (AEC/SEAGD). FGT states that the subject meter station, located in Escambia County, Alabama, was previously constructed under Section 311 of the Natural Gas Policy Act of 1978 and serves as a delivery point to AEC/SEAGD from FTG's existing 36-inch and 30-inch mainlines under a firm transportation service agreement dated November 1, 1995. Initial gas deliveries commenced on November 19, 1995. FTG states that the present and proposed quantity of natural gas delivered at the subject meter station is up to 16,530 MMBtu per day and 2,496,030 MMBtu annually.

FTG states that the gas quantity proposed to be delivered to AEC/SEAGD at the subject meter station would be within the existing authorized levels of service and would have no incremental effect on FGT's pipeline system.

Comment date: March 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 385.211 and 385.214) 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, purusant to the authority contained in and subject to 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1066 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–003]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 18, 1996.

Take notice that on January 11, 1996, ANR Pipeline Company (ANR), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective on the later on April 1, 1996 or the first day of the month following the date of an order accepting the filing:

Third Revised Sheet No. 90
Second Revised Sheet No. 112
Second Revised Sheet Nos. 119–122
First Revised Sheet No. 123
Second Revised Sheet No. 153
Original Sheet No. 153A

ANR states that the revised tariff sheets are being filed in compliance with the Commission's Order Following Technical Conference issued December 7, 1995.

ANR states that copies of the filing were served upon its Second Revised Volume No. 1 shippers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–935 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2687]

Pacific Gas and Electric Co.; Notice of Authorization for Continued Project Operation

January 18, 1996.

On December 20, 1993, Pacific Gas and Electric Company, licensee for the Pit No. 1 Project No. 2687, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's Regulations thereunder. Project No. 2687 is located on the Tule, Little Tule, Fall, and Pit Rivers in Shasta County, California.The license for Project No.

2687 was issued for a period ending December 31, 1995. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2687 is issued to Pacific Gas and Electric Company for a period effective January 1, 1996, through December 31, 1996, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1996, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Pit No. 1 Project No. 2687 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 96–931 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Condit Project No. 2342 Washington]

PacifiCorp Electric Operations; Notice of Intent to Hold Public Meeting in White Salmon, Washington, to Discuss the Draft Environmental Impact Statement (DEIS) for Relicensing of the Condit Hydroelectric Project

January 18, 1996.

On December 8, 1995, the Draft Environmental Impact Statement for the Condit Hydroelectric Project was distributed to all parties on the Commission's mailing list and a notice of availability was published in the Federal Register. The DEIS evaluates the environmental consequences of the proposed relicensing of the project. The project is located in Skamania and Klickitat counties, Washington.

Two public meetings have been scheduled to be held in White Salmon Washington, for the purpose of allowing Commission Staff to present the major DEIS findings and recommendations. Interested parties will have an opportunity to give oral comment on the DEIS for the Commission's public record. Comments will be recorded by a court reporter. Individuals will be given up to five minutes each to present their views on the DEIS.

Meeting Dates & Times:

Monday, February 5 from 7:00 p.m.–11:00 p.m.

Tuesday, February 6 from 9:30 a.m.–3:00 p.m.

Location: Both meetings will be held at the Park Center Auditorium, 170 NW Lincoln Street, White Salmon, Washington (the main entrance to the auditorium is from Washington Street).

Comments may also be submitted in writing, addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Reference should be clearly made to the Condit Project, No. 2342. All comments must be received by February 21, 1996.

For further information, contact: John Blair, DEIS Task Monitor, (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 96–930 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2699]

Pacific Gas and Electric Co.; Notice of Authorization for Continued Project Operation

January 18, 1996.

On December 21, 1993, Pacific Gas and Electric Company, licensee for the Angels Project No. 2699, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's Regulations thereunder. Project No. 2699 is located on Angels Creek in Calaveras County, California.

The license for Project No. 2699 was issued for a period ending December 31, 1995. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2699 is issued to Pacific Gas and Electric Company for a period effective January 1, 1996, through December 31, 1996, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 1996, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Angles Project No. 2699 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 96–932 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–262–031]

Panhandle Eastern Pipe Line Co.; Notice of Compliance Filing

January 18, 1996.

Take notice that on January 11, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Revised Refund Report to company with the Commission's December 7, 1995, Order on Rehearing And On Refund Reports. 73 FERC ¶ 61,287

Panhandle states that the Commission's December 7, 1995, Order concerned issues respecting refunds for the three customers who had not agreed to a settlement to resolve the issues in the RP88–262–000 dockets and who thus called upon the Commission to provide a substantive disposition of their claims. See 69 FERC ¶ 61,313 and 72 FERC ¶ 61,048. Those three customers are Associated Natural Gas Company (ANG), Central Illinois Light Company (CILCO) and Union Electric Company (Union Electric), hereinafter collectively referred to as ''non-consenting parties.'' The contents of this submission reflect only the changes required to Panhandle's Revised Refund Report filed on July 1, 1994 as they relate to Sales Customers, including the three customers affected by this report, ANG, CILCO and Union Electric. No cash refunds are due the non-consenting parties.

Panhandle states that copies of this filing are being served on ANG, CILCO and Union Electric, their state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–933 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–111–000]

Sea Robin Pipeline Company; Notice of Petition for Waiver

January 18, 1996.

Take notice that on January 3, 1996, Sea Robin Pipeline Company (Sea Robin) filed a petition for a waiver of the 30-day notice requirement set forth in Section 154.207 of the Commission's Regulations.

Sea Robin states that in light of the Commission's ruling in Koch Gateway (Koch) Order, Sea Robin requests a waiver of the Commission's 30-day notice requirement to allow the Northern Natural Gas Company (Northern) Settlement to take effect on the date agreed upon between the parties. Sea Robin states that good cause exists for such a waiver to allow the Northern Settlement to take effect on January 1, 1994, and such finding in favor of a waiver will be consistent with the Commission's finding in the Koch Order.

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 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before January 25, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–937 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–74–017]

South Georgia Natural Gas Co.; Notice of Revised Tariff Sheets

January 18, 1996.

Take notice that on January 5, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Third Revised Sheet No. 5
Third Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to the December 20, 1995, Order on Initial Decision issued in Docket No. RP92–74–011 in which the Commission required South Georgia to design its interruptible transportation rate based upon a 100 percent load factor. South Georgia requests that the tariff sheets become effective on January 1, 1996, consistent with South Georgia's April 8, 1993, Stipulation and Agreement in Docket Nos. RP92–74–011 et al.

South Georgia states that copies of the filing were served upon South Georgia's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of South Georgia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–934 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–000]

Tennessee Gas Pipeline Company; Notice of Motion to Place Tariff Sheets Into Effect

January 18, 1996.

Take notice that on January 5, 1996, Tennessee Gas Pipeline Company (Tennessee) filed to move Substitute First Revised Sheet No. 209A into effect as of January 1, 1996.

Tennessee states that it filed First Revised Sheet No. 209A on December 1, 1995. That sheet contains a reference to the appropriate percentage for crediting of net cash out revenues. However, First Revised Sheet No. 209A misstates that percentage as 75%. The correct percentage is 76.9%. Substitute First Revised Sheet No. 209A bears the correct reference to 76.9% rather than the incorrect reference to 76%.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–936 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–114–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 18, 1996.

Take notice that on January 11, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective February 8, 1996.

Trunkline states the revised tariff sheets propose a Rate Schedule QNIT and associated conforming revisions to the General Terms and Conditions. Rate Schedule QNIT offers the same characteristics as Trunkline's Quick Notice Transportation under firm Rate Schedule QNT, except that QNIT is interruptible. The scheduling flexibility for firm shippers under Rate Schedule QNT is mirrored for interruptible shippers under Rate Schedule QNIT. Rate Schedule QNIT shippers are permitted to make multiple changes to their nomination within the gas day to be effective on one hour's notice to Trunkline. The sum of the nominated quantities for any gas day may not exceed the MDQ stated in shipper's service agreement. Intra-day nominations will be scheduled when and to the extent that Trunkline determines that it is operationally feasible.

Trunkline states that a copy of this filing is being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–938 Filed 1–23–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of $770,280.18 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Brio Petroleum, Inc. (Case No. VEF–0017), Merit Petroleum Company (Case No. VEF–0018), Texas American Oil Corp. (Case No. VEF–0019), Transcontinental Energy Corp. (VEF–0020) and Utex Oil Co.(Case No. VEF–0021). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate February 23, 1996, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107. All comments should conspicuously display a reference to Case Nos. VEF–0017, *et al.*

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $770,280.18, plus accrued interest, remitted to the DOE by Brio Petroleum, Inc., Merit Petroleum, Inc., Texas American Oil Corp., Transcontinental Energy Corp., and Utex Oil Co. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995, deadline for crude oil refund applications has passed, we propose not to accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585–0107.

Dated: January 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Names of Firms: Brio Petroleum, Inc., Merit Petroleum Company, Texas American Oil Corporation, Transcontinental Energy Corporation, Utex Oil Company.

Date of Filings: September 1, 1995.

Case Numbers: VEF–0017, VEF–0018, VEF–0019, VEF–0020, VEF–0021.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed five Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The Petitions request that OHA formulate and implement procedures to distribute funds received by the DOE from Brio Petroleum, Inc. (Brio), Merit Petroleum Company (Merit), Texas American Oil Corporation (Texas American), Transcontinental Energy Corp. (Transcontinental), and Utex Oil Company (Utex), pursuant to bankruptcy proceedings in which the DOE was a creditor as a result of enforcement proceedings against the firms. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

I. Background

As indicated by the following summaries of the relevant enforcement proceedings, all of the funds that are subject to this Decision were obtained through enforcement actions involving alleged or adjudicated crude oil overcharges.

A. Brio

Brio [1] was a reseller of crude oil during the period May 1, 1978 through December 31, 1979 (the audit period), and was subject to the crude oil reseller regulations set forth at 10 C.F.R. Part 212, Subpart L. As the result of an ERA audit of Brio's operations, on November 20, 1984, the ERA issued a Proposed Remedial Order (PRO) to the firm alleging that it had engaged in layered crude oil transactions in violation of 10 C.F.R. § 212.186, by charging prices for crude oil in excess of actual purchase prices without providing any service or other function traditionally and historically associated with the resale of crude oil during the audit period. After denying a Statement of Objections filed by White, Brio was issued a Remedial Order (RO) by the OHA on April 16, 1987. *Brio Petroleum, Inc.*, 15 DOE ¶ 83,033 (1987).[2] Subsequently, the matter was referred to the U.S. Department of Justice (DOJ) for enforcement of the RO. Although judgment was entered against Brio, the firm had previously filed for bankruptcy. The firm possessed assets insufficient to satisfy claims of general unsecured creditors, including the DOE. On July 14, 1993, the DOJ compromised the claim against White for $5,000. As of November 30, 1995, the Brio Consent Order fund contained $5,000 in principal plus accrued interest.

B. Merit

Merit [3] was a reseller of crude oil, and was subject to the crude oil reseller regulations set forth at 10 C.F.R. Part 212, Subpart L. As the result of an ERA audit of Merit's operations, on October 20, 1986, the ERA issued a PRO to the firm alleging that during the period November 1978 through December 1980, the firm engaged in layered crude oil transactions in violation of 10 C.F.R. § 212.186, by charging prices for crude oil in excess of actual purchase prices without providing any service or other function traditionally and historically associated with the resale of crude oil. Merit submitted a Statement of Objections to the PRO. After considering and rejecting Merit's objections, the OHA issued an RO to Merit on January 31, 1990. *Merit Petroleum, Inc.*, 20 DOE ¶ 83,002 (1990). The RO found that Merit's layered transactions resulted in overcharges amounting to $48,290,793.17. The RO was affirmed by the Federal Energy Regulatory Commission (FERC). *Merit Petroleum, Inc.*, 65 FERC ¶ 61,175. During the course of a subsequent federal district court proceeding, Merit and the DOE stipulated to an Agreed Judgment, which resolved the Merit enforcement proceeding. Pursuant to the Agreed Judgment, Merit agreed to pay to the DOE the sum of $64,715. Merit has fulfilled its financial obligation to the DOE. As of November 30, 1995, the Merit Consent Order fund contained $64,715 in principal plus accrued interest.

C. Texas American

During the price control period, Texas American was engaged in crude oil refining and reselling. The firm was therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 C.F.R. Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. In an audit which covered the period from October 1976 through February 1977, the ERA identified instances in which it found that Texas American misreported certain crude oil subject to ''processing agreements'' in its Refiners' Monthly Reports, and thereby received excessive small refiner bias benefits under DOE's Entitlements Program, 10 C.F.R. 211.66, 211.67. As a result of the ERA audit, a PRO was issued to Texas American on September 30, 1986. Texas American filed a Statement of Objections on April 14, 1987. On September 19, 1988, the OHA denied the Statement of Objections, affirmed the findings of the PRO, and issued an RO to Texas American. *Texas American Oil Corp.*, 17 DOE ¶ 83,017 (1988). Texas American had filed a petition of bankruptcy on July 2, 1987, and the petition was still pending when the RO was issued. After protracted litigation, the Bankruptcy Court for the Northern District of Texas, Dallas Division, entered a Final Consent Order that had been agreed to by the parties concerning the DOE's proof of claim, and ordered $48,307.13 to be distributed to the DOE in full satisfaction of its claim. Texas American has fulfilled its financial obligation to the DOE. As of November 30, 1995, the Texas American Consent Order fund contained $48,307.13 in principal plus accrued interest.

D. Transcontinental

Transcontinental was a producer of crude oil during the period of January 1975 through December 1980, and was subject to the Federal petroleum price and allocation regulations. On March 30, 1979, the ERA issued a Notice of Probable Violation to Transcontinental alleging $372,151.67 in crude oil overcharge violations from several properties it operated. Transcontinental had filed a petition in bankruptcy on October 14, 1977, and had been adjudicated bankrupt on October 5, 1978. The trustee appointed by the Bankruptcy Court opposed DOE's claim, but the United States District Court in Nevada on appeal ruled in favor of the DOE. *In re Transcontinental Energy Corp.* v. *United States Department of Energy*, 3 Fed. Energy Guidelines ¶ 26,638 (D. Nev. 1990), *aff'd*, 950 F.2d 733 (Temp. Emer. Ct. App. 1991). Transcontinental's estate was insufficient to satisfy completely the claims of unsecured creditors, including the DOE. As a result, DOE received $231,335.32. As of November 30, 1995, the Transcontinental settlement fund

[1] References to Brio in this Decision include L.B. White, President, Treasurer, and a Director (White), who maintained a controlling interest in the firm during the price control period.

[2] The RO found that the firm alone was liable for refunding $1,093,548, plus accrued interest, for the layering violations that occurred from May through July 1978. White and the firm were jointly liable for the layering violations which occurred after August 1, 1978, that resulted in overcharges amounting to $849,570.

[3] References to Merit in this Decision include Thomas H. Battle, President and a Director of Merit, and Anton E. Meduna, Vice President, a Director, General Manager and Secretary of Merit.

contained $231,335.32 in principal plus accrued interest.

E. Utex

During the period of Federal petroleum price controls, Utex was engaged in producing and selling crude oil. Utex was therefore subject to the regulations governing the pricing of crude oil set forth at 10 C.F.R. Parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. On June 16, 1982, the ERA issued a PRO to the firm in which it alleged that during the period from July 1, 1975 through April 30, 1980, Utex improperly classified and priced crude oil produced from several properties it operated. In addition, the PRO also alleged that Utex disregarded the current cumulative deficiency rule, erroneously computed the base production control level, and erroneously applied the stripper well lease exemption to certain properties. As a result of these violations, the PRO alleged that Utex overcharged its customers by $502,833.21. Utex filed a Statement of Objections to the PRO on September 29, 1982. On February 19, 1985, the OHA issued the PRO as a RO. *Utex Oil Co.,* 12 DOE ¶ 83,031 (1985). The RO was affirmed by the FERC. *Utex Oil Co.,* 36 FERC ¶ 61,099 (1986). In the course of an appeal to the United States District Court in Utah, Utex and the DOE entered into a Stipulation for Withdrawal of Appeal and Judgment on Counterclaim and Order (Stipulation). Accepting the Stipulation, the Court granted DOE a judgment against Utex of $884,794.01. The judgment provided the basis for DOE's claim in the bankruptcy proceeding initiated by Utex on August 1, 1986. Utex's estate was insufficient to satisfy completely the claims of general unsecured creditors, including the DOE. As a result, DOE received distributions totalling $420,922.73. As of November 30, 1995, the Utex settlement fund contained $420,922.73 in principal plus accrued interest.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986,* 15 U.S.C. §§ 4501 et seq.; see also *Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

We have considered the OGC's petitions that we implement Subpart V proceedings with respect to the five settlement funds and have determined that such proceedings are appropriate. The following section of this Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the monies remitted pursuant to the five enforcement proceedings in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 Fed. Reg. 27899 (August 4, 1986), which was issued as a result of the Settlement Agreement approved by the court *In re The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. See *City of Columbus Georgia,* 16 DOE ¶ 85,550 (1987).

The amount of money subject to this Proposed Decision is $770,280.18 plus accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds ($154,056.04 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We propose to base refunds to claimants on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. See 60 FR 15562 (March 24, 1995).

Applicants who have executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement have waived their rights to apply for a crude oil refund under Subpart V. See *Mid-America Dairyman Inc.* v. *Herrington,* 878 F.2d 1448, 3 Fed. Energy Guidelines ¶ 26,617 (Temp. Emer. Ct. App. 1989); *In re Department of Energy Stripper Well Exemption Litigation,* 707 F. Supp. 1267, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan 1987). Because the June 30, 1995, deadline for crude oil refund applications has passed, we propose not to accept any new applications from purchasers of refined petroleum products for these funds. See *Western Asphalt Service, Inc.,* 25 DOE ¶ 85,047 (1995). Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.[4]

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $616,224.14 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be

[4] A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. See, *e.g., Ernest A. Allerkamp,* 17 DOE ¶ 85,079 at 88,176 (1988).

in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That: The refund amounts remitted to the Department of Energy by Brio, Merit, Texas American, Transcontinental and Utex pursuant to their respective settlement agreements or judgments will be distributed in accordance with the foregoing Decision.

[FR Doc. 96–903 Filed 1–23–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00422; FRL–4991–8]

Pesticides; Renewal of Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, Maximum Residue Limit (MRL) Petitions for Pesticides on Food/Feed and New Inert Ingredients (ICR No. 0597) will expire on May 31, 1996. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before March 25, 1996.

ADDRESSES: Submit written comments identified by the docket control number ''OPP–00422'' and ICR number ''0597'' by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as a ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00422'' and the ICR number ''0597.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–6475, e-mail: kramer.ellen@epamail.epa.gov.

Copies of the complete ICR and accompanying appendices may be obtained from Ellen Kramer at the above address or by contacting the OPP docket at the location under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: *Electronic Availability:* Electronic copies of each ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

I. Information Collection Requests

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Maximum Residue Limits Petitions on Food/Feed and New Inert Ingredients. ICR No. 0597. OMB No. 2070-0024. Expiration date: May 31, 1996.

Affected entities: Parties affected by this information collection are manufacturers of pesticide chemicals.

Abstract: The use of pesticides on crops often results in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, EPA sets limits, formerly known as tolerances, on the nature and level of residues permitted. EPA is mandated under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended, to ensure that the maximum residue levels likely to be found in or on food/feed are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, EPA must ensure that adequate enforcement of the maximum residue limits (MRL) can be achieved through testing by submitted analytical methods. EPA will establish an MRL or grant an exemption from the requirement of an MRL once the data reviewed are deemed adequate.

Burden Statement: This information is a one-time collection. The overall respondent burden hours associated with this collection has decreased from the current ICR estimate of 856,920 hours to 216,300 hours per year. This change is the result of the decrease in the number of residue petitions per year. Cost estimates, however, have increased due to more realistic labor rates supplied by the Bureau of Labor Statistics which reflect more accurately the costs borne by the pesticide manufacturers.

The annual respondent burden for this program is estimated to average 1,442 hours per response, including time for: reading any instructions, conducting required studies, compiling the information/data, completing paperwork, and storing/filing/maintaining the data. There is no third party notification or public disclosure burden associated with this collection.

Any 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 contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or

other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding this matter, or any other aspect of this information collection, including suggestions for reducing the burden, to the docket under the ADDRESSES unit listed above.

III. Public Record

A record has been established for this action under docket number ''OPP–00422'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Fri0day, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

List of Subjects

Environmental protection and Information collection requests.

Dated: December 15, 1995.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–881 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–640; FRL–4989–1]

Ecoscience Corp.; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Ecoscience Corp. a petition to establish an exemption from the requirement of a tolerance for residues of the microbial pest control agent *Metarhizium anisopliae* strain ESC1 in and on all raw agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-640]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8733; e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Ecoscience Corp., 377 Plantation St., Worcester, MA 01605,a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 4F4381 to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for residues of the microbial pest control agent *Metarhizium anisopliae* strain ESC1 in and on all raw agricultural commodities.

A record has been established for this rulemaking under docket number [PF-640] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

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

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

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: December 12, 1995.

Janet L. Anderson

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

[FR Doc. 96–720 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66220; FRL 4991–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 23, 1996, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 67 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239–00565	Ortho Rose & Floral Dust Formula IV	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) Rotenone Cube Resins other than rotenone cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000239–00690	Ortho Rotenone Dust or Spray	Rotenone Cube Resins other than rotenone
000239–02433	Ortho Tomato and Vegetable Insect Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone
000239–02477	Ortho Tomato Vegetable Garden Dust	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) Rotenone Cube Resins other than rotenone
000323–00028	Holcomb Woodvale Mountain Mint Room Deodorant & Air Sanitizer	Ethanol 1,2-Propanediol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Triethylene glycol
000352–00247	Du Pont Karmex Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352–00351	Du Pont Krovar II Herbicide	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352–00352	Dupont Krovar I Weed Killer (Wettable Powder)	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352–00396	Dupont Benlate DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352–00410	4% Bromacil + 4% Diuron Granular Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352–00411	Dupont 40 % Bromacil and 40% Diuron Powder	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352–00440	Dupont Krovar II DF Herbicide	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 AR–77–0018	Du Pont Karmex Weed Killer	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000352 OK–90–0001	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
000432–00047	Rotenone Technical	Rotenone Cube Resins other than rotenone
000432–00562	1% Rotenone Dust	Rotenone Cube Resins other than rotenone
000432–00565	5% Rotenone (Powdered Cube Root)	Rotenone Cube Resins other than rotenone

TABLE 1.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000432–00580	Pyrethrins/Rotenone Garden Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
000432–00677	Noxfire Insecticide with Rotenone EC 5% Formula II	Rotenone Cube Resins other than rotenone
000432–00683	Noxfire Insecticide with Rotenone Emulsifiable 5% Formula	Rotenone Cube Resins other than rotenone
000432–00694	Rotenone/Pyrethrins Transparent Emulsion Spray 0.006% +	Pyrethrins Rotenone Cube Resins other than rotenone
000432–00695	Ultra Tec Insecticide with Rotenone/Pyrethrins Transparent Emulsion Spray	Pyrethrins Rotenone Cube Resins other than rotenone
000432–00697	Ultra Tec Insecticide with Rotenone/Pyrethrins Transparent Emulsion Spray	Pyrethrins Rotenone Cube Resins other than rotenone
000432–00698	Rotenone/Pyrethrins Transparent Emulsion Spray 0.02% +	Pyrethrins Rotenone Cube Resins other than rotenone
000432–00700	Ultra Tec Insecticide with Rotenone/Pyrethrins Transparent Emulsion Spray	Pyrethrins Rotenone Cube Resins other than rotenone
000432–00717	PB-Nox Insecticide with Rotenone/PBO EC 4% + 8%	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Rotenone Cube Resins other than rotenone
000432–00720	Noxfire Insecticide with Rotenone EC 2.5%	Rotenone Cube Resins other than rotenone
000499–00129	Whitmire PT 585	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
000499–00151	Terminex Aero Term Industrial Insecticide	Butoxypolypropylene glycol (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
000769–00832	Miller V-75 A Dust containing Rotenone 0.75%	Rotenone Cube Resins other than rotenone
000769–00889	Agrisect Rotenone Dust 1%	Rotenone Cube Resins other than rotenone
000769–00892	Methoxychlor 5% Granular	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
001021–01046	D-Trans Intermediate 1818	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl*d*-trans-2,2-dimethyl- Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2-Hydroxyethyl octyl sulfide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
001270–00232	Zepax-II	2-Benzyl-4-chlorophenol 4-tert-Amylphenol *o*-Phenylphenol

TABLE 1.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		4-Chloro-3,5-xylenol
001270–00233	ZEP 30-A	2-Benzyl-4-chlorophenol 4-tert-Amylphenol *o*-Phenylphenol 4-Chloro-3,5-xylenol
002217–00251	Mill and Farm Bin Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002548–00028	Max Kill Mill and Bin Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
003125 SD–91–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 SD–92–0003	Sencor Solupak Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003862–00099	New Lemon Scent Spray Surface Disinfectant	Ethanol
		4-tert-Amylphenol *o*-Phenylphenol
004816–00051	Cube Resins	Rotenone Cube Resins other than rotenone
004816–00120	BPR Liquid Base	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
004816–00123	BPR Dust Base	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
004816–00166	Rotenone 5% Emulsifiable Insecticide	Rotenone Cube Resins other than rotenone
004816–00276	Special Pressurized Spray Concentrate 94613	1-Naphthyl-*N*-methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone *N*-((Trichloromethyl)thio)phthalimide
004816–00348	Rose & Floral Spray-Residual	1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone *N*-((Trichloromethyl)thio)phthalimide
004816–00459	Plant Spray P.R. Concentrate Insecticide	Pyrethrins Rotenone Cube Resins other than rotenone
004816–00483	Tomato & Vegetable Insect Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
004816–00484	Niagara Rotenone Dust Code 345	Rotenone Cube Resins other than rotenone
004816–00485	Ro-Kil Spray Insecticide	Rotenone Cube Resins other than rotenone
004816–00697	Rotacide E.C.	Rotenone
010370–00207	Organicide Dip	Pyrethrins Rotenone Cube Resins other than rotenone
010370–00252	Fire Ant Control	Rotenone Cube Resins other than rotenone
010807–00100	Neo-San Disinfectant Sanitizer Deodorizer	Ethanol
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})

TABLE 1.— REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
028293–00106	Unicorn Dairy and Beef Cattle Dust	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
028293–00183	Unicorn Insecticide with Rotenone/ Pyrethrins Emulsifiable	Pyrethrins Rotenone Cube Resins other than rotenone
033955–00527	Acme Pestroy 25% Methoxychlor	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
034704 MS–82–0031	Clean Crop Methyl P.	*O,O*-Dimethyl *O*-*p*-nitrophenyl phosphorothioate Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
034704 OR–84–0038	Rampart 10-G Soil and Systemic Insecticide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–88–0006	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
039398–00009	Sumithion 40 WDP	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
039398–00013	Sumithion 8E	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
039398–00028	Sumithion 50 EC	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
040510–00004	Disinfectant, Food Service (Chlorine - Iodine Type) Mil-D	Potassium iodide Potassium dichloro-*s*-triazinetrione
047677–00001	Copper Control	Copper (from triethanolamine complex)
050932–00001	Sabadilla Pest Control	Veratrine (mixture, Cevadine + Veratridine, with other alkaloids)
059639 VA–94–0005	Payload 15 Granular	*O,S*-Dimethyl acetylphosphoramidothioate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000323	J.I. Holcomb Mfg. Co., 4500 Euclid Ave, Cleveland, OH 44103.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
002217	PBI/Gordon Corp., c/o James Armbruster, Regulatory Services, Box 014090, Kansas City, MO 64101.
002548	Research Products Co., Div of McShares Inc., Box 1460, Salina, KS 67402.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co., Inc., Box 16247, Atlanta, GA 30321.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
028293	Unicorn Laboratories, 13535 Feather Sound Dr., Suite 400, Clearwater, FL 34622.
033955	PBI/Gordon Corp., c/o James Armbruster, Regulatory Services, Box 014090, Kansas City, MO 64101.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
039398	Sumitomo Chemical America, Inc., c/o Director of Insect Control & Research Inc., 1330 Dillon Heights Ave, Baltimore, MD 21228.
040510	U.S. Army Natick RD&E Center, Attn: SATNC-WRA (Jerry Jarboe), Natick, MA 01760.
047677	Argent Chemical Laboratories, Inc., 8702 – 152nd Ave, N.E., Redmond, WA 98052.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
050932	Necessary Organics Inc., One Nature's Way, New Castle, VA 24127.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before April 23, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 7, 1995.

Frank Sanders,

Director, Program Management Support Division, Office of Pesticide Programs.

[FR Doc. 96–884 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00424; FRL–4992–1]

Statement of Policy Regarding Toxicologically Significant Levels of Pesticide Active Ingredients; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy developed in a draft Pesticide Regulation (PR) Notice entitled ''Toxicologically Significant Levels of Pesticide Active Ingredients.'' Interested parties may request this document as described in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number ''OPP–00424,'' must be received on or before March 25, 1996.

ADDRESSES: The PR Notice is available from Jim Jones: By mail: Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 6th Floor, CS-1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8358, e-mail: jones.jim@epamail.epa.gov.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00424.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones at the telephone number, office location, or e-mail address listed under the ADDRESSES unit of this document.

SUPPLEMENTARY INFORMATION: EPA is soliciting comments on a proposed policy developed in a draft PR Notice entitled ''Toxicologically Significant Levels of Pesticide Active Ingredients.'' EPA's current policy is that any level of an impurity that is also an active ingredient in another pesticide is considered ''toxicologically significant'' and must be reported to EPA. The draft PR Notice proposes to change the Agency's definition of ''toxicologically significant'' levels of active ingredients

to a risk-based standard. This Federal Register notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. After reviewing public comments received, EPA may make changes to the Policy and revise the draft PR Notice prior to release.

A record has been established for this action docket number ''OPP–00424'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–882 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5401–8]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the City Bumper Site

AGENCY: Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA Section 122(h)(1) administrative cost recovery settlement for the City Bumper Site.

SUMMARY: U.S. EPA proposes to address the potential liability of General Dynamics Corporation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Public Law 99–499, for past costs incurred in connection with a federal fund lead removal action conducted at the City Bumper Site (''the Site'') located in Cincinnati, Ohio. The U.S. EPA proposes to address the potential liability of General Dynamics by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement (''AOC'') prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) General Dynamics agrees to pay U.S. EPA $83,689.00 in satisfaction of claims for past costs incurred at the Site in connection with the removal and disposal of a underground storage tanks (''USTs'') and their contents; (2) General Dynamics agrees to waive all claims against the United States that arise out of response activities conducted at the Site; and (3) U.S. EPA affords General Dynamics a covenant not to sue for past costs incurred during the removal action and contribution protection as provided by CERCLA Sections 113(f)(2) and 122(h)(4) upon satisfactory completion of obligations under the Settlement. However U.S. EPA is free to pursue any other necessary and appropriate judicial and administrative relief against General Dynamics. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time. The Attorney General has approved the Settlement.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before February 23, 1996.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mike Anastasio at (312) 886–7951, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Mike Anastasio, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio at (312) 886–7951, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Valdas V. Adamkus,

Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 96–1049 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5401–9]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Ninth Avenue Dump Site

AGENCY: Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA Section 122(h)(1) administrative cost recovery settlement for the Ninth Avenue Dump Site.

SUMMARY: U.S. EPA proposes to address the potential liability of the following companies (hereinafter referred to as the ''Settling Parties'') under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Public Law 99–499, for past and future costs incurred at the Ninth Avenue Dump Site (''the Site'') located in Gary, Indiana: American National Can Company; Ashland Chemical Company, a division of Ashland, Inc.; Cargill, Incorporated; Chamberlain Manufacturing Corporation; Crown Cork & Seal Co., Inc., and Continental Can Co.; Flint Ink Corporation; General Electric Company; J.M. Huber Corporation; Mobil Oil Corporation; Monsanto Company; Navistar International Transportation Corp.; PPG Industries, Inc.; Premier Coatings, Inc.; Regal Tube Company, currently doing business as Copperweld Chicago Division of Copperweld Tubing Products Company; RHI Holdings, Inc., as successor to Rexnord, Inc.; Rust-Oleum Corporation; The Sherwin-Williams Company; Valhi, Inc. (Chicago Steel and Wire Division; and The Valspar Corporation/Elliot Paint. The U.S. EPA proposes to address the potential liability of the Settling Parties by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement (''AOC'') prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) The

U.S. EPA would be reimbursed for all of its outstanding past costs of $2,545,773.63 incurred at the Ninth Avenue Dump Site; (2) the Settling Parties agree to reimburse the U.S. EPA for all of its future response costs incurred at the Site; (3) the Settling Parties agree not to assert any claims or causes of action against the United States with respect to any matters concerning the Site; and (4) the U.S. EPA affords the Settling Parties a covenant not to sue for past and future response costs and contribution protection as provided by CERCLA Sections 113(f)(2) and 122(h)(4) upon satisfactory completion of their obligations under the Settlement. However, U.S. EPA is free to pursue any other necessary and appropriate judicial and administrative relief against the Settling Parties and any necessary and appropriate judicial and administrative relief against any other party. The Site is on the National Priorities List (''NPL''), and remedial response activities at the Site are continuing. The Attorney General has approved the Settlement.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before February 23, 1996.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mike Berman at (312) 886–6837 or Mike Anastasio at (312) 886–7951, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Mike Berman/ Mike Anastasio, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mike Berman at (312) 886–6837 or Mike Anastasio at (312) 886–7951, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Valdas V. Adamkus,

Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 95–1050 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5402–3]

CWA 303(d): Establishment of Phased Total Maximum Daily Loads (TMDLs) for Copper, Mercury, Nickel and Lead in New York-New Jersey Harbor

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II is hereby issuing final public notice on the establishment of Phased Total Maximum Daily Loads (TMDLs) for copper and mercury in New York-New Jersey Harbor. The TMDLs are being established in cooperation with the States of New York and New Jersey.

DATES: January 24, 1996.

ADDRESSES: Copies of the responsivenesss summary and TMDL support documents can be obtained by writing to Ms. Rosella T. O'Connor, Technical Evaluation Section, U.S. Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10006–1866 or calling (212) 637–3711.

The administrative record containing background technical information on the TMDLs developed by EPA, in conjunction with the States of NY and NJ, is on file and may be inspected at the U.S. EPA, Region II office between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella O'Connor, telephone (212) 637–3711.

SUPPLEMENTARY INFORMATION:

I. Background

The New York-New Jersey Harbor is geographically defined as the Hudson River from the Tappan Zee Bridge extending out to the Outer Harbor and including the Harlem River, East River to the Throgs Neck Bridge, Jamaica Bay, Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Kill Van Kull, Arthur Kill, and the Raritan River/Bay below the Fieldville Dam.

Under the auspices of the New York-New Jersey Harbor Estuary Program, the States of New York and New Jersey and EPA joined in a cooperative effort to collect ambient and source data, develop a water quality model to assess relative loadings from all sources (municipal and industrial discharges, storm water, combined sewer overflows, sediment flux, atmospheric deposition and tributaries), and develop Total Maximum Daily Loads (TMDLs).

Due to the interstate nature of the New York-New Jersey Harbor and the desirability of consistency and equity among dischargers, the State of New Jersey requested that EPA promulgate TMDLs for the New York-New Jersey Harbor. EPA will, therefore, establish TMDLs as a federal action. Except for the Kill Van Kull, New York State has already implemented the necessary water quality-based effluent limits for waterbodies within the Harbor by issuing individual control strategies in the form of modified permits. EPA is establishing TMDLs for the remaining waterbodies for which New York State has not established TMDLs as well as Harbor waterbodies in the State of New Jersey. The EPA promulgation will result in the incorporation of TMDLs into State Water Quality Management Plans. In the State of New Jersey, this promulgation will amend the Northeast, the Lower Raritan/ Middlesex County and the Monmouth County Water Quality Management Plans. In New York State, this promulgation will amend the New York State Water Quality Management Plan.

II. Final Determination

In the proposed public notice (40 FR 41293, August 11, 1994), EPA indicated that the basis of the TMDLs was the most stringent of the applicable NJ or NY standards for mercury (0.025 μg/L), nickel (7.1 μg/L) and lead (8.5 μg/L), expressed as the total recoverable form of the metal. Since that time, EPA issued an Interim Final Rule (60 FR 22228, May 4, 1995), amending the National Toxics Rule. The Interim Final Rule became effective on April 14, 1995. This rule establishes dissolved criteria for nickel and lead in New Jersey. Phase I TMDLs are not being developed for nickel and lead, at this time. Insufficent data were available to determine if TMDLs based on the dissolved nickel and lead criteria were necessary. The mercury criterion will continue to be expressed as total recoverable since it is a fish tissue based criterion. The copper criterion used to develop TMDLs is 5.6 μg/L (expressed as dissolved metal). This value is the most stringent of the two proposed site-specific copper criteria developed (7.9 [acute] and 5.6 [chronic] μg/L dissolved) for the Harbor waters (for additional information regarding the development of the site-specific copper criteria, refer to EPA's document entitled ''Development of a Site-Specific Copper Criterion for the NY/NJ Harbor Complex Using the Indicator Species Procedure'').

Based on ambient monitoring data and/or water quality modeling efforts, certain waterbodies within the Harbor exceed or are projected to exceed applicable water quality standards. In such cases, the Clean Water Act requires that the States calculate the maximum amount of the pollutant that the waterbody can assimilate and still meet ambient water quality standards. This amount, called the total maximum daily load, is then used to allocate loads among sources of pollutants. Loads allocated to point sources (e.g. municipal dischargers) are termed Waste Load Allocations (WLAs). Loads allocated to nonpoint sources (e.g. atmospheric inputs) are termed Load Allocations (LAs).

Waterbodies within the Harbor which are known or projected to exceed applicable water quality standards and have been determined to require TMDLs are denoted by an ''X'' in Table 1. Certain waterbodies in the Harbor do not require TMDLs for all the metals of concern. For these waterbodies, no further action is being proposed. The ''#'' notation indicates that the need for TMDLs will be reassessed, based on dissolved nickel and lead criteria, after the completion of the Phase II monitoring in these waterbodies.

TABLE 1.—WATERBODIES NEEDING TMDLS

Waterbody	Copper	Mercury	Nickel	Lead
Hudson River		X		
Inner Harbor		X		
Outer Harbor		X		
Arthur Kill/Kill Van Kull	X	X	#	#
East R./Harlem R		X		
Jamaica Bay		X		
Raritan River/Bay	X	X	#	#
Hackensack R./Passaic R./Newark Bay	X	X	#	#

The TMDLs for copper, and mercury use a phased TMDL approach. For copper, the waterbodies listed in Table 1 exceed applicable water quality standards based on concentrations projected to occur by the water quality model employed for this TMDL effort. Due to the limited ambient and loading data, the state of the model calibration is uncertain for the Raritan River/Bay, the Hackensack and Passaic Rivers, and Newark Bay. Based on the available ambient data, it has been determined that existing loads are adequate to meet applicable water quality standards. The Phase I TMDLs for these waters will be based on limiting municipal and industrial point source dischargers to existing loads. Additional data collection and modeling for the Hackensack River, Passaic River, Newark Bay, Kill Van Kull, Arthur Kill, and Raritan River/Bay will be required. Once sufficient data have been collected and the water quality model has been adequately calibrated, Phase II TMDLs will be developed, adopted and implemented, as necessary, by the States of New York and New Jersey with assistance from EPA.

As indicated in Table 1, both ambient and model projected exceedances of mercury standards occur throughout the Harbor. Water quality modeling for mercury indicated that a significant portion of the total mercury load was not identified by the monitoring conducted to support the TMDL effort. This load, attributed to atmospheric deposition, drives exceedances of water quality standards. The Phase I TMDLs for mercury are based on freezing existing point source loads and reducing atmospheric deposition loading by a portion of the anticipated levels of reduction resulting from the implementation of the Clean Air Act. Additional monitoring and water quality modeling will be conducted to: reassess the previously identified sources; quantify loads from atmospheric deposition and sediment flux; recalibrate the mercury water quality model; and to calculate Phase II TMDLs.

Based on applicable water quality standards and an assessment of loadings to the Harbor, Phase I TMDLs were calculated and allocated among municipal dischargers, industrial dischargers, combined sewer overflows, storm water, atmospheric, and tributaries. These TMDLs/WLAs/LAs are shown in Table 2.

For copper, the Phase I TMDLs/WLAs/LAs are based on existing loads from: industrial/municipal dischargers identified as contributing significant loads of the above substances; combined sewer overflows; storm water dischargers; atmospheric deposition; and tributary sources.

For mercury, Phase I TMDLs/WLAs/LAs are based on existing loads for all point sources and a projected reduction in atmospheric loads due to implementation of the Clean Air Act.

The TMDLs/WLAs/LAs listed in the Tables below are not enforceable permit limits. The enforceable permit limits for municipal and industrial dischargers will be developed by the States based on the WLAs listed below. The Phase I effluent limits for municipal and industrial dischargers will be based on existing effluent quality and will be developed in accordance with ''EPA Region II's Guidance for Calculating Permit Effluent Limitations Based on Existing Effluent Quality.'' A copy of this document may be obtained by contacting the above mentioned person.

The tables below identify the Phase I TMDLs/WLAs/LAs for copper and mercury in the Harbor. Additional information regarding the calculation of the TMDLs/WLAs/LAs and a listing of the individual WLA for each municipal and industrial discharger may be found in EPA's document entitled ''Total Maximum Daily Loads (TMDLs) for Copper, Mercury, Nickel and Lead in NY-NJ Harbor.''

TABLE 2.—T4TMDLs/WLAs/LAs for New York-New Jersey Harbor

TMDL: Copper	Loading Zone (loads in lbs/day total recoverable metal)	Hack/Pas/Newark	
	WLA/LA	Kills	Raritan R/Bay
MUN./IND.	11.16	31.21	34.85
CSO	17.30	17.10	1.40
STORM WATER	53.30	35.10	42.70
BOUNDARY	2.73	0.00	3.90
ATMOSPHERIC	7.40	46.40	67.60
TMDL	91.89	129.81	150.45

TMDL: Mercury

[Loads in lbs/day total recoverable metal]

Loading zones	Mun./ind.	CSOs [1]	Storm water [2]	Boundary [1]	Atmospheric [3]	TMDLs
Hudson River	0.185	0.057	0.481	0.138	0.245	1.106
Inner Harbor	0.183	0.034	0.007	0	0.054	0.278
Outer Harbor	0.000	0.026	0.010	0	1.139	1.175
Kills	0.328	0.066	0.516	0	0.225	1.135
East & Harlem R.	1.005	0.216	1.260	0	0.679	3.16
Jamaica Bay	0.274	0.106	0.119	0.	0.093	0.592
Raritan Bay	0.442	0.005	0.628	0.003	0.328	1.406
Hack/Pas/ Newark B.	0.215	0.060	0.784	0.002	0.036	1.097

[1] Load includes a projected 10% reduction.
[2] Load includes a projected 30% reduction.
[3] Load includes a projected 60% reduction.

NOTES: Hack/Pas/Newark=Hackensack River, Passaic River and Newark Bay.
Mun./Ind.=Municipal and Industrial dischargers.

Dated: December 15, 1995.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 96–1052 Filed 1–23–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 95–61, FCC 95–491]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Second Annual Report to Congress.

SUMMARY: Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 548(g), requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. On December 11, 1995, the Commission released its second such annual report (''1995 Report''). The 1995 Report provides data and information that summarize the status of competition in the market for the delivery of video programming and update the Commission's first Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (''1994 Report''), summarized at 59 FR 64657 (December 15, 1994). The 1995 Report is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a Notice of Inquiry in this docket, summarized at 60 FR 29533 (June 5, 1995).

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marcia A. Glauberman, Cable Services Bureau (202) 416–1184 or Martin L. Stern, Office of the General Counsel (202) 418–1880.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's 1995 Report in CS Docket No. 95–61, FCC 95–491, adopted December 7, 1995, and released December 11, 1995. The complete text of the 1995 Report is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition, the complete text of the 1995 Report is available on the Internet at http://www.fcc.gov/Bureaus/Cable/Reports/fcc95491.zip

Synopsis of the 1995 Report

1. The 1995 Report examines the cable television industry, other existing multichannel video programming distributors (''MVPDs''), and other existing and potential competitors to cable television. In the 1995 Report, the Commission also examines market structure and competition, measures horizontal concentration in the cable television industry, and evaluates vertical integration between cable television systems and programming services. In addition, the 1995 Report provides information on issues of access to programming and technical advances. Finally, the 1995 Report assesses the status of competition in the market for the delivery of video programming by examining the extent of competition, evaluating market performance, and reporting on existing and potential impediments to entry and competition, including strategic behavior that could deter entry and regulatory, legal, and other potential impediments.

2. Key Findings.

• Industry Growth—Since the 1994 Report, subscriber penetration, average system channel capacity, the number of programming services available, revenues, expenditures on programming, and capital investment generally have increased for the cable industry.

• Horizontal Concentration—Since 1994, there also has been an increase in the horizontal concentration of cable multiple system operators (''MSOs'') nationwide and increased regional ''clustering'' of cable system ownership. Although the cable industry is moderately concentrated nationally, local markets for the distribution of multichannel video programming tend to be highly concentrated as measured by subscribership among all MVPDs.

• Competitive Entry—Although the percentage of subscribers choosing competitive alternatives to incumbent cable operators has increased since our last report, cable subscribership continues to dwarf the combined subscribership of all other MVPDs, accounting for 91% of the total.

• Vertical Integration—While the number of cable programming services has increased over the past year, the percentage of services that are vertically integrated with cable operators has declined slightly. The Commission's program access and program carriage rules, and its decisions applying those rules, seem to have been successful in ensuring that competing MVPDs are able to obtain the programming services affiliated with cable MSOs.

• Technological Advances—Technological advances are occurring that will permit MVPDs to increase the quantity of service (i.e., increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services). On the basis of the information reported, however, it is unclear which distributors will benefit the most from these technological advances—existing cable operators or their existing and potential competitors.

Ordering Clauses

3. This 1995 Report is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403 and 548(g).

4. *It is ordered* that the Secretary shall send copies of this 1995 Report to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–959 Filed 1–23–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1996–1]

Filing Dates for the California Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: California has scheduled special elections on March 26 and May 21, 1996, in the Thirty-seventh Congressional District to fill the U.S. House seat vacated by Congressman Walter Tucker.

Committees required to file reports in connection with the Special General Election on March 26 should file a 12-day Pre-General Report on March 14, 1996. Committees required to file reports in connection with both the Special General and Special Runoff Elections to be held on May 21, should no candidate achieve a majority vote, must file a 12-day Pre-General Report, an April Quarterly Report on April 15, a 12-day Pre-Runoff Report on May 9, and a Post-Runoff Report on June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street NW., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on March 14, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 6; an April Quarterly Report on April 15, with coverage dates from March 7 through March 31; a 12-day Pre-Runoff Report on May 9, with coverage dates from April 1 through May 1; and a Post-Runoff Report on June 20, with coverage dates from May 2 through June 10, 1996.

All principal campaign committees of candidates in the Special General Election only and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on March 14, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 6 and a Post-General Report on April 25, with coverage dates from March 7 through April 15, 1996.

All political committees not filing monthly which support candidates in the Special Runoff only shall file a 12-day Pre-Runoff Report on May 9, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through May 1, and a Post-Runoff Report on June 20, with coverage dates from May 2 through June 10, 1996.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

I. If only the Special General is held (03/26/96), Committees Must File:

Report	Close of books*	Regular/certificate mailing date**	Filing date
Pre-General	03/06/96	03/11/96	03/14/96
April Quarterly		—Waived—	
Post-General	04/15/96	04/25/96	04/25/96
II. If Two Elections are Held, but a Committee is Involved Only in the Special General (03/26/96):			
Pre-General	03/06/96	03/11/96	03/14/96
April Quarterly	03/31/96	04/15/96	04/15/96
III. All Committees Involved in the Special General (03/26/96) and Special Runoff (05/21/96) Must File:			
Pre-General	03/06/96	03/11/96	03/14/96
April Quarterly	03/31/96	04/15/96	04/15/96
Pre-Runoff	05/01/96	05/06/96	05/09/96

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS—Continued

I. If only the Special General is held (03/26/96), Committees Must File:

Report	Close of books*	Regular/certificate mailing date**	Filing date
Post-Runoff	06/10/96	06/20/96	06/20/96
IV. All Committees Involved in the Special Runoff (05/21/96) Only Must File:			
Pre-Runoff	05/01/96	05/06/96	05/09/96
Post-Runoff	06/10/96	06/20/96	06/20/96

*The period begins with the close of books of the last report filed by the committee. If the Committee has filed no previous reports, the period begins with the date of the committee's first activity.

**Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: January 19, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–967 Filed 1–23–96; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009831–016.

Title: New Zealand/United States Containerline Association.

Parties:

Australia-New Zealand Direct Line
Blue Star (North America) Ltd.
Columbus Line

Synopsis: The proposed Agreement revises Article 5.2 to provide that the parties have the authority under the Agreement to charter space to and from each other. The Agreement also modifies the voting procedures with respect to service contracts and time-volume rates.

Agreement No.: 207–011280–001.

Title: Star West Joint Service Agreement.

Parties:

Blue Star Line, Ltd.
Overseas Freezer Operations GmbH

Synopsis: The proposed Agreement expands the geographic scope of the Agreement to include ports in Japan, Korea, Taiwan and Hong Kong. The parties have requested a shortened review period.

Agreement No.: 202–011497–001.

Title: Australia/United States Containerline Association.

Parties:

Australia-New Zealand Direct Line
Blue Star (North America) Ltd.
Columbus Line

Synopsis: The proposed Agreement revises Article 5.2 to provide that the parties have the authority under the Agreement to charter space to and from each other. The Agreement also modifies the voting procedures with respect to service contracts and time-volume rates.

Agreement No.: 203–011467–001.

Title: APL/MOL/NLL/OOCL Asia Atlantic Alliance Agreement.

Parties:

American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nedlloyd Lines B.V.
Orient Overseas Container Line, Inc.

Synopsis: The proposed Agreement revises the geographic scope of the Agreement to include the countries of Indonesia and the Philippines in the definition of the ''Far East''. It also clarifies that the Puerto Rico and Virgin Islands will be served by feeder service.

Agreement No.: 203–011523.

Title: Wallenius Lines/HUAL Space Charter Agreement.

Parties:

Wallenius Lines AB.
Hoegh Ugland Auto Liners A/S

Synopsis: The proposed Agreement authorizes the parties to agree upon the terms and conditions by which the parties may charter space to each other on vessels operated by each of them in the trade from United States Atlantic Coast ports and points served via those ports, on the one hand, to ports in Europe, the United Kingdom and the Republic of Ireland and points served via those ports, on the other hand. The parties may also, but are not required to, discuss and agree upon rates, rules, and conditions of service in the trade but are not required to adhere to any such agreed matters except on a voluntary basis.

Agreement No.: 203–011524.

Title: Star/Seatrade Cooperative Working Agreement.

Parties:

Star West Joint Service
Seatrade Group N.V.

Synopsis: The proposed Agreement permits the parties to charter vessels from one another, rationalize sailings, discuss and agree upon rates, charges, classifications, rules, practices, terms of service contracts, and other matters of mutual concern in the trade from United States ports and points to ports and points in Japan, Korea, Taiwan and Hong Kong. Adherence to any agreement reached is voluntary.

Agreement No.: 203–011525.

Title: Navieras/Tropical Caribbean Basin Agreement.

Parties:

NPR, Inc. (''Navieras'')
Tropical Shipping & Construction Co., Ltd. (''Tropical'')

Synopsis: The proposed Agreement authorizes the parties to charter space and vessels to and from one another, to rationalize sailings, and to establish a joint service in the trade to and from the Dominican Republic in which they will retain their separate identity but pool revenues and expenses. The parties may also, on a voluntary and non-binding basis, discuss and agree upon rates, rate policy, service items and any terms and conditions of tariffs and service contracts in the trade: (a) Between ports and points on the United States Atlantic and Gulf Coasts, on the one hand, and ports and points in Mexico, Central America, the North Coast of South America and the Caribbean, on the other hand, and (b) between ports and points in Puerto Rico and the U.S. Virgin Islands, on the one hand, and ports and points in Mexico, Central America, the

North Coast of South America and the Caribbean, on the other hand. The parties have requested a shortened review period.

Agreement No.: 232–011526.

Title: Mitsui O.S.K. Lines, Ltd./ Hoegh-Ugland Auto Liners A/S Space Charter Agreement.

Parties:

Mitsui O.S.K. Lines, Ltd.
Hoegh-Ugland Auto Liners A/S

Synopsis: The proposed Agreement authorizes the parties to charter space to and from each other in amounts and upon terms as they may from time to time agree upon, and to rationalize sailings in the trade from ports in the U.S. Atlantic, Pacific and Gulf Coasts, on the one hand, to ports in the United Kingdom and Northern Europe (Bordeaux to Wallhann range), on the other hand. The parties have requested a shortened review period.

Agreement No.: 224–200968.

Title: Port of Oakland/South Pacific Container Line Inc. Terminal Agreement.

Parties:

Port of Oakland (''Port'')
South Pacific Container Line, Inc. (''SPCL'')

Synopsis: The proposed Agreement permits SPCL the non-exclusive rights to certain premises at the Port's Charles P. Howard Terminal. Subject to Agreement provisions, SPCL will pay to the Port eighty percent of dockage tariff charges and seventy percent of wharfage tariff charges.

Dated: January 18, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–918 Filed 1–23–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

CARGOCARE, 2508 Kings Canyon Court, Puyallup, WA 98374, Wendy Lyn Ashby, Sole Proprietor

Dawn Freight, Inc., 2070 N. W. 79th Avenue, Miami, FL 33126, Officers: Alba L. Gallo, President, Gustavo Gallo, Treasurer, Luz Zapata, Secretary

International Documents & Parcel Express, Inc., 8025 S. W. 107th Avenue. Suite #306, Miami, FL 33173, Officers: Cassar A. Baez, President, Victor G. Baez, Vice President

Marathon International Transport Services LLP, 7100 Washington Avenue South, Eden Prairie, MN 55344–3584, Managing Partner: James Joseph DeLuca

NRIII International, 139 Mitchell Avenue, Suite 216, South San Francisco, CA 94080, Nicholas Rendon III, President/Sole Proprietor

SUREXPRESS, 231 w. 135TH Street, Gardena, CA 90061, Partners: Lia T. Guezille, Fabian Cerutti

Expeditors International (Puerto Rico) Inc., 65 Infantry Station, San Juan, Puerto Rico 00929, Officers: Kevin M. Walsh, President/Director, Mario Alfonso, Treasurer, Secretary/ Director.

Dated: January 18, 1996.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–919 Filed 1–23–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

DFC Acquisition Corporation Two, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation Two, Kansas City, Missouri; to engage *de novo* through its subsidiary, Dickinson Financial Corporation, Kansas City, Missouri, in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Garnett Bancshares, Inc., Garnett, Kansas; to engage *de novo* through its yet unnamed subsidiary, located in Garnett, Kansas, in title insurance agency activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–904 Filed 1–23–96; 8:45 am]

BILLING CODE 6210–01–F

Holcomb Bancorp, Inc. Employee Stock Ownership Plan, 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 February 16, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Holcomb Bancorp, Inc. Employee Stock Ownership Plan, Holcomb, Illinois; to become a bank holding company by acquiring 33 percent of the voting shares of Holcomb Bancorp, Inc., Holcomb, Illinois, and thereby indirectly acquire Holcomb State Bank, Holcomb, Illinois.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Puget Sound Bancorp, Port Orchard, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Port Orchard, Port Orchard, Washington.

Board of Governors of the Federal Reserve System, January 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–905 Filed 1–23–96; 8:45 am]

BILLING CODE 6210–01–F

HSBC Holdings plc; Notice to Engage in Certain Nonbanking Activities;

HSBC Holdings plc, London, England, and HSBC Holdings BV, Amsterdam, The Netherlands (together, Notificants), have provided 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)), to engage de novo through their wholly owned subsidiary, HSBC Securities, Inc., New York, New York (HSI), in underwriting and dealing in debt and equity securities, other than interests in open-end investment companies; trading futures, options on futures, and options on instruments eligible for investment by national banks, interest rates and non-U.S. sovereign debt securities; and acting as agent in the syndication of loans. Notificants propose to engage in these activities throughout the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which 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 generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity 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 (January 5, 1984).

Notificants maintain that the Board previously has determined by order and regulation that the proposed activities are closely related to banking. See 12 CFR 225.25(b)(1); *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); *Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989), aff'd sub nom. *Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); and *Citicorp,*, 73 Fed. Res. Bull. 473 (1987), aff'd sub nom. *Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988). Notificants have stated that HSI would conduct these proposed activities within the limitations and prudential guidelines established by the Board. Notificants also have stated that HSI would not derive more than 10 percent of its total gross revenue from underwriting and dealing in bank-ineligible securities over any two-year period.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by HSI ''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). Notificants believe that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificants maintain that the proposal would enhance competition and enable Notificants to offer their customers a broader range of products. Notificants also maintain that their proposal would not result in any 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 application 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 and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 7, 1996. Any request for a hearing on this application 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 the 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 New York.

Board of Governors of the Federal Reserve System, January 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–906 Filed 1–23–96; 8:45 am]

BILLING CODE 6210–01–F

Mercantile Bancorporation, Inc.; 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 February 7, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire Metro Savings Bank, F.S.B., Wood River, Illinois, and thereby engage in owning and operating a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–907 Filed 1–23–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010196 AND 011296

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
A.H. Belo Corporation, John S. Hager, Owensboro Publishing Company	96–0559	01/02/96
Ashtead Group PLC, William T. Theros, McLean Rentals, Inc	96–0642	01/02/96
Barry Diller, Tele-Communications, Liberty HSN, Inc	96–0640	01/03/96
Barry Diller, Savoy Pictures Entertainment, Inc., Savoy Pictures Entertainment, Inc	96–0646	01/03/96
Kenneth W. Ford, Weyerhaeuser Company, Weyerhaeuser Company	96–0650	01/03/96
Bausch & Lomb Incorporated, Gregory F. Arnette, Arnet Optic Illusions, Inc	96–0656	01/03/96
Glencore Holding AG, Alumax Inc., Alumax Inc	96–0657	01/03/96
The Triumph Group Holdings, Inc., Teleflex Incorporated, Teleflex Incorporated	96–0658	01/03/96
URS Corporation, Greiner Engineering, Inc., Greiner Engineering, Inc	96–0711	01/03/96
PerSeptive Biosystems, Inc., PerSeptive Technologies II Corporation, PerSeptive Technologies II Corporation	96–0638	01/04/96
Lowell W. Paxson, Shop at Home, Inc., Shop at Home, Inc	96–0659	01/04/96
Ingersoll-Rand Company, MascoTech, Inc., MascoTech, Inc	96–0660	01/04/96
Harsco Corporation, Thermadyne Holdings Corporation, Coyne Cylinder Company	96–0663	01/04/96
RPM, Inc., TCI, Inc., TCI, Inc	96–0666	01/04/96
Paper Converting Machine Company, Bemis Company, Inc., Hayssen Manufacturing Company	96–0667	01/04/96
Hallmark Cards, Inc., Jay Brinsfield, Matthew's Inc. of Delaware	96–0668	01/04/96
Jacob Elie Beaucaire Safra, William Benton Foundation, Encyclopedia Britannica Holdings Ltd	96–0669	01/04/96
K N Energy, Inc., Tom Brown, Inc., Tom Brown, Inc	96–0682	01/04/96
Tom Brown, Inc., K N Energy, Inc., K N Production Company	96–0683	01/04/96
Bayer AG, Pharmacopeia, Inc., Pharmacopeia, Inc	96–0684	01/04/96
North American Fund II, L.P., SoftKey International Inc., Softkey International Inc	96–0690	01/04/96
Summit Ventures IV, L.P., Radius, Inc., Splash Technology, Inc	96–0694	01/04/96
The S.K. Equity Fund, L.P., Targus Group International, Inc., Targus Group International, Inc	96–0703	01/04/96
George Wimpey PLC, Tarmac PLC, John McLean & Sons Ltd	96–0718	01/04/96
Tarmac PLC, George Wimpey PLC, Wimpey Construction Limited & Wimpey Minerals Hold. Ltd	96–0719	01/04/96
Kenneth R. Thomson, SCS/Compute, Inc., SCS/Compute, Inc	96–0727	01/04/96
Texas Industries, Inc., Thomas Schmindheiny (a Swiss person), PLA Holdings, Inc	96–0391	01/05/96
Columbia/HCA Healthcare Corporation, Osteopathic Hospital Founders Association, Osteopathic Hospital Founders Association	96–0551	01/05/96
Lincolnshire Equity Fund, L.P., Barry Weisfeld, Cricket Acquisition Corporation	96–0617	01/05/96
Harvard Pilgram Health Care, Inc., Dartmouth Hitchcock Medical Center, Matthew Thornton Health Plan, Inc	96–0644	01/05/96
Stuart and Anita Subotnick, Kelso Partners IV, L.P., KWIZ, Inc., KMAX, Inc., KAXX, Inc. and KBAX, Inc	96–0651	01/05/96
Amwest Insurance Group, Inc., Condor Services, Inc., Condor Services, Inc	96–0652	01/05/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010196 AND 011296—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Shared Technologies, Inc., Jeffrey J. Steiner, Fairchild Industries, Inc	96–0664	01/05/96
Jeffrey J. Steiner, Shared Technologies Inc., Shared Technologies Inc	96–0665	01/05/96
National Gaming Corp., Forte Plc, Forte Hotels, Inc	96–0706	01/05/96
Paul F. Wallace, Forte Plc, Forte Hotels, Inc	96–0707	01/05/96
USIF, Real Estate, Forte Plc, Forte Hotels, Inc	96–0708	01/05/96
Texaco Inc., Royal Dutch Petroleum Company, Shell Western E&P, Inc	96–0533	01/11/96
Alco Standard Corporation, Mark E. Hawn, Atlanta Legal Copies, Inc	96–0627	01/11/96
Everett R. Dobson Irrevocable Family Trust, Telephone and Data Systems, Inc. Voting Trust, Telephone and Data Systems, Inc. Voting Trust	96–0655	01/11/96
Jeffrey J. Steiner, Banner Aeorspace, Inc., Banner Aerospace, Inc	96–0675	01/11/96
Block Drug Company, Inc., The Proctor & Gamble Company, The Proctor & Gamble Company	96–0677	01/11/96
The Atlantic Foundation, Envoy Corporation, Envoy Corporation	96–0696	01/11/96
Estate of Charles A. Sammons, NACOLAH Holding Corporation, NACOLAH Holding Corporation	96–0700	01/11/96
HFS, Incorporated, Forte plc, Forte Hotels, Inc	96–0705	01/11/96
LCI International, Inc., Ronald H. Vanderpol, Teledial America, Inc	96–0712	01/11/96
Brooks Fiber Properties, Inc., Ronald H. VanderPol, City Signal, Inc	96–0720	01/11/96
Ronald H. VanderPol, Brooks Fiber Properties, Inc., Brooks Fiber Properties, Inc	96–0721	01/11/96
The Chase Manhattan Corporation, James I. Swenson, Swenson Family Trust, revocable trust, Details, Inc	96–0723	01/11/96
Champion International Corporation, Toufic Aboukhater, Lake Superior Land Company	96–0731	01/11/96
Vestar Equity Partners, L.P., Acadia Partners, L.P., Pinnacle Automation, Inc	96–0736	01/11/96
Delco Remy International, Inc., Beurt R. SerVaas, Power Investments, Inc	96–0742	01/11/96
Yamaha Motor Co., Ltd., Ronald O. Perelman, Skeeter Products, Inc	96–0744	01/11/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC. 20580 (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–1043 Filed 1–23–96; 8:45 am]

BILLING CODE 6570–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA 96–001]

National Institute for Occupational Safety and Health Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop a direct reading immunoassay device for monitoring human urinary metabolites of the herbicide, alachlor. Humans metabolize alachlor in such a way as to produce a set of chemically altered compounds (metabolites) that are more easily excreted, primarily in urine. By determining the level of these metabolites in urine of workers who are at risk for exposure to alachlor, an assessment of exposure can be made. The device that CDC wants to have developed would allow rapid and easy determination of urinary metabolite levels, thus allowing intervention procedures to be implemented.

It is anticipated that all inventions which may arise from the CRADA will be jointly owned. The collaborator with whom the CRADA is made will have an option to negotiate an exclusive or non-exclusive royalty-bearing license. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, much freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA.

This opportunity is available until February 23, 1996. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION:

Technical: R. DeLon Hull, Ph.D. or J. Patrick Mastin, Ph.D., Division of Biomedical and Behavioral Sciences, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Mailstop C–26, Cincinnati, Ohio 45226, Telephone 513–533–8122 and 513–533–8399, Fax 513–533–8510.

Business: Theodore F. Schoenborn, Technology Transfer Coordinator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Mailstop R–2, Cincinnati, Ohio 45226, Telephone 513–841–4305, Fax 513–841–4500.

SUPPLEMENTARY INFORMATION: The direct reading device should be similar to home pregnancy test kits and suitable for use by the worker or a local health care professional. For instance a test strip made of an absorbent material such as chromatography paper would be held in the urine stream or dipped in a sample of urine and the urine allowed to wick up the strip. The presence and approximate concentration of the metabolite would be visualized as, for instance, a color change (as with pH test paper) or the appearance of a color band at a height indicative of the concentration of the metabolite. The concentration of metabolite could then be estimated, for example, from a gradient scale imprinted on the device or by comparison to a visual standard. Urine from herbicide applicators being screened during NIOSH field studies will be used to test the strips as they are being developed.

The device should meet the following requirements:

Requires no special expertise to use, so that workers or their local health professionals can use the device.

Be immunoassay-based, in order to get sufficient sensitivity and selectivity.

Be self-contained, i.e., does not require any instrumentation for analysis.

Be produced easily and inexpensively and be readily available to workers.

Applicants will be judged according to the following criteria:

1. Adequacy and technical capabilities to develop the desired technologies and product;

2. Ability to develop, produce, market, and support the device; and

3. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The response must be made to: Theodore F. Schoenborn, Technology Transfer Coordinator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Mailstop R–2, Cincinnati, Ohio 45226 Telephone 513–841–4305, Fax 513–841–4500.

Dated: January 17, 1996.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–950 Filed 1–23–96; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95D–0166]

Quality Assurance Program Audits and Inspections; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7151.02 entitled ''FDA Access to Results of Quality Assurance Program Audits and Inspections.'' This revised CPG provides general policy and guidance to FDA field and headquarters staff (engaged in the inspection and investigation of any regulated entity) regarding routine access to review reports or copying of records that result from the entity's audits and inspections of a written quality assurance program.

ADDRESSES: CPG 7151.02 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tom M. Chin, Office of Enforcement (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0410.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7151.02 entitled ''FDA Access to Results of Quality Assurance Program Audits and Inspections.'' This CPG was revised to provide general policy and clearer guidance to FDA field and headquarters staff (engaged in the inspection and investigation of any regulated entity) regarding routine access to review reports or copying of records that result from the entity's audits and inspections of a written quality assurance program.

The statements made in CPG 7151.02 are not intended to bind the courts, the public, or FDA, or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: January 3, 1996.

Gary Dykstra

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 96–940 Filed 1–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0386]

Guidance for Industry; Content and Format of Investigational New Drug Applications (IND's) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-Derived Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry; Content and Format of Investigational New Drug Applications (IND's) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products.'' The guidance clarifies data requirement issues related to the initial entry of an unapproved drug into human studies in the United States. The guidance is intended to expedite the entry of new drugs into clinical studies by eliminating ambiguities in IND requirements and by decreasing inconsistencies in IND reviews.

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry; Content and Format of Investigational New Drug Applications (IND's) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products'' to the Consumer Affairs Branch (formerly the CDER Executive Secretariat Staff), Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, or the Congressional and Consumer Affairs Branch, Center for Biologics Evaluation and Research (HFM–12), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–1800 or 800–835–4709. Send two self-addressed adhesive labels to assist the offices in processing your requests. A copy of the guidance document is also available from CDER's FAX On Demand. To obtain a copy from FAX On Demand, call 1–800–342–2722 or locally 301–827–0577. An electronic version of the guidance document is also available via Internet. Requesting persons should connect to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV) using the FTP protocol. The guidance is available in WordPerfect versions 5.2 and 6.0. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–6740, or Rebecca Devine, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance entitled ''Guidance for Industry; Content and Format of Investigational New Drug Applications (IND's) for Phase 1 Studies of Drugs, Including Well-Characterized, Therapeutic, Biotechnology-derived Products.'' Any use in humans in the United States of a drug product not

previously authorized for marketing in the United States first requires the submission of an IND to FDA. FDA regulations in §§ 312.22 and 312.23 (21 CFR 312.22 and 312.23) contain the general principles underlying the IND submission and the general requirements for an IND's content and format. This guidance clarifies these requirements related to the initial entry of an unapproved drug, including well-characterized, therapeutic, biotechnology-derived products.

Because of the manufacturing and toxicologic differences between well-characterized, therapeutic, biotechnology-derived products and other biologic products, the guidance only applies to drugs that are not also biologics and to well-characterized, therapeutic, biotechnology-derived biologic products. For products not covered by the guidance the center responsible for the product should be contacted for guidance.

The requirements in §§ 312.22 and 312.23 permit a great deal of flexibility in the amount and depth of data to be submitted in an IND, depending in large part on the phase of the investigation and the specific human testing proposed. In some cases, the extent of that flexibility and the limited data needed has not been appreciated. FDA believes that clarification of these requirements will decrease the submission of unnecessary data and help expedite the entry of new drugs into clinical testing by increasing transparency and reducing ambiguity and inconsistencies. These clarifications will reduce the amount of information ordinarily submitted in an IND, yet continue to provide the agency with the data it needs to assess the safety of the proposed Phase 1 study.

The most significant clarifications contained in the guidance are FDA's willingness to accept an integrated summary report of toxicology findings as initial support for human studies based upon unaudited, draft, toxicological reports of completed animal studies, as well as specific manufacturing data that FDA will accept as appropriate for a Phase 1 study. This guidance applies equally to both commercial and individual investigator sponsors of IND's.

As part of the President's Reinventing Government Initiative, FDA has been reviewing its regulatory processes to determine which requirements could be reduced or eliminated without lowering health and safety standards. These clarifications of the IND requirements have been identified during this review and should significantly reduce the burden on industry regarding data submitted in Phase 1 IND's without sacrificing the quality of FDA's review of the IND.

In addition to this guidance, FDA is preparing an advance notice of proposed rulemaking (ANPR) that will describe proposed revisions to the IND regulations that FDA is contemplating to facilitate further the entry of drugs into clinical studies so that safe and effective drugs can be made available in the United States more quickly. The ANPR is expected to be published in the first quarter of 1996 and will address the possibility of: (1) A specific single dose IND with limited data requirements and (2) reducing or eliminating the IND submission requirements for individual investigators who would like to use products already in Phase 2 of commercial development.

Although this guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the industry, it does represent the agency's current thinking on data requirement issues related to the initial entry of an unapproved drug into human studies in the United States.

Although the guidance is being implemented immediately because it merely clarifies existing regulations and is expected to reduce the data submission burden on the industry, FDA is soliciting comments on the guidance that will be taken into account in making further revisions or clarifications to the IND process. FDA is particularly interested in comments on how the guidance could be extended to cover biological products other than well-characterized, therapeutic, biotechnology-derived products or whether a separate guidance should be developed for those products.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–943 Filed 1–23–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Form No.:* HCFA–2728; *Use:* This form captures the necessary medical information required to determine Medicare eligibility of an end stage renal disease claimant. It also captures the specific medical data required for research and policy decisions on this population as required by law. *Frequency:* Annually; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 60,000; *Total Annual Hours Requested:* 25,200.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 16, 1996

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–910 Filed 1–23–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, January 24–25, 1996 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on January 24, from 8:00 am to 1:30 pm for overview and discussion of the Institute's Cancer Centers Extramural Program.

The meeting will be closed to the public on January 24, from 1:30 pm to approximately 7:00 pm and on January 25 and 8:30 am to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 600, Bethesda, MD 20892, (301–496–4218). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Paulette Gray in advance of the meeting.

Dated: January 18, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1129 Filed 1–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute et al.; Amended Notice of Meetings

Due to the partial shutdown of the Federal Government, notice is hereby given of changes and/or postponements in the following meetings, as previously advertised in the Federal Register.

1. National Eye Institute

National Advisory Eye Council (NAEC) was to have convened at 8:30 a.m., January 25, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, MD, as published in the Federal Register on December 20, 1995, (60 FR 244 65661). The meeting has been changed to March 7, Executive Plaze North, Conference Room H. As previously advertised, the meeting will be open from 8:30 a.m. to approximately 11:30 a.m., and will be closed from 11:30 a.m. to adjournment.

2. National Institute on Aging

National Advisory Council on Aging was to have convened on February 1 and February 2, 1996, National Institutes of Health, Building 31, Conference Room 6, Bethesda, MD, as published in the Federal Register on December 7, 1995. (60 FR 235 62871). The meeting has been changed to a one-day teleconference on February 1, same location. The meeting will be open from 1 p.m. to 2 p.m., and will be closed from 2 p.m. to adjournment.

3. National Institute of Allergy and Infectious Diseases

National Advisory Allergy and Infectious Diseases Council (NAAIDC) and its Subcommittees, were to have convened at 8 a.m., January 29, 1996, as published in the Federal Register December 7, 1995, (60 FR 235 62871).

—The closed sessions of the subcommittee meetings, scheduled for January 29, 8 a.m. to 1 p.m. are canceled.

—The open session of the NAAIDC Microbiology and Infectious Diseases Subcommittee was to have convened on January 30 at 8:30 a.m., but has been changed to January 29, 10 a.m. to 1 p.m., National Institutes of Health, Building 31, Conference Room 6.

As previously advertised in the Federal Register, the meeting of the full Council will be open to the public on January 29, Conference Room 6, from 1 p.m. to 3:30 p.m., and will be closed from 3:30 p.m. to recess. The NAAIDC Allergy and Immunology Subcommittee will be open to the public on January 30, Conference Room 8, 8:30 a.m. to adjournment. The NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public on January 30, 8 a.m. to recess, and on January 31, 8 a.m. to adjournment, Executive Board Conference Room, Natcher Building.

Dated: January 19, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1131 Filed 1–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health for January 1996.

The meeting will be open to the public, as indicated, for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named below in advance of the meeting.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 4, U.S.C. and section 10(d) of Public Law 92–463, a portion of the Council will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Name of Committee: National Advisory Mental Health Council.

Date: January 29, 1996.

Place: Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: January 29, 9 a.m. to 12 p.m.

Closed: January 29, 1 p.m. to adjournment.

Contact Person: Carolyn Strete, Ph.D., Executive Secretary, Parklawn Building,

Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

This notice is being published less than 15 days prior to the above meeting due to the partial shutdown of the Federal Government and 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: January 19, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1128 Filed 1–23–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–2992–N–03]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 25, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4240, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing Drug Elimination Program, Application and Reporting.

OMB Control Number, if applicable: 2577–0124.

Description of the need for the information and proposed use: This information is necessary so that eligible applicants can submit applications/plans to HUD for review and approval for grant funds for this Program. Grantees must provide HUD with a semi-annual program report which evaluates the grantee's progress against its plan.

Agency forms numbers, if applicable: Not applicable.

Members of affected public: State or local governments; Non-profit institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 800 respondents, annually, 45 average hours per response, 95,400 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing.

[FR Doc. 96–968 Filed 1–23–96; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–00]

Emergency Closure of Public Lands; Churchill County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: This notice amends the emergency closure notice published in the Federal Register on February 1, 1991, Vol. 56, No. 22, for the closure of approximately 24,246 acres of public lands located adjacent to Bravo-16, Bravo-17 and Bravo-19 Bombing Ranges respectively. The February 1 notice describes those lands that remained contaminated with ordnance following the final sweep and disposal effort by the U.S. Navy. The notice states that the 24,464 acres are closed to public access from the date of publication of the notice in the Federal Register until further notice. This notice opens approximately 32 acres of previously closed public lands near Bravo-19 Bombing Range.

SUMMARY: In order to facilitate public access through an existing roadway which traverses contaminated and closed lands east of Bravo-19, U.S. Navy experts cleared and fenced a swath of land 100 feet on either side of the existing roadway for a distance of 7,000 feet. The U.S. Navy has indicated in writing that the lands, containing 32 acres, have been rendered safe by the Explosive Ordnance Detachment (EOD). The fenced area will also be swept on a monthly basis by the Navy personnel to ensure continued public safety. The public lands affected by this amended notice are within the following described area:

Mt. Diablo Meridian

T. 15 N., R. 30 E.,
Sec. 1, lots 3 and 4, SW¼NE¼, SE¼NW¼, NW¼SE¼.

Mt. Diablo Meridian

T. 16 N., R. 30 E.,
Sec. 35, E½SW¼.

DATES: This amendment goes into effect on February 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Area Manager, Lahontan Resource Area, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: The opening of the above described lands to public access in no way affects the other public lands closed by the February 1, 1991 notice, issued pursuant to the regulations under 43 CFR 8364.1.

Dated January 18, 1996.

James M. Phillips,

Area Manager, Lahontan Resource Area.

[FR Doc. 96–951 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–03–P

[NV–030–96–1990–02, N36–86–003P]

Notice of Intent to Prepare an Environmental Impact Statement on an Amended Plan of Operations for Kennecott Rawhide Mining Company in Mineral County, Nevada; and Notice of Scoping Period and Public Meeting

AGENCY: Bureau of Land Management, Carson City District Office.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR Part 3809, the Bureau of Land Management will be directing the preparation of an Environmental Impact Statement to be produced by a third-party contractor on the impacts of a proposed amended Plan of Operations for expansion of the existing Denton-Rawhide Mine, an open-pit heap leach gold/silver mine operated by Kennecott Rawhide Mining Company, in Mineral County, Nevada. The Bureau invites comments on the scope of the analysis.

EFFECTIVE DATES: An open-house meeting will be held February 15, 1996, from 4 p.m. to 7 p.m., at the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Carson City, NV to allow the public an opportunity to identify issues and concerns to be addressed in the Environmental Impact Statement. Representatives of Kennecott Rawhide Mining Company will be available to answer questions about the amended Plan of Operations. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations and the scope of the Environmental Impact Statement will be accepted until March 1, 1996.

A Draft Environmental Impact Statement is expected to be completed by late spring 1996 and made available for public review and comment. At that time a Notice of Availability of the Draft Environmental Impact Statement will be published in the Federal Register. The comment period on the Draft Environmental Impact Statement will be 60 days from the date the Notice of Availability is published.

FOR FURTHER INFORMATION CONTACT: Scoping comments may be sent to: District Manager, Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706. ATTN: Rawhide Environmental Impact Statement Project Manager.

For additional information, write to the above address or call Terri Knutson at (702) 885–6156.

SUPPLEMENTARY INFORMATION: Kennecott Rawhide Mining Company of Fallon, Nevada has submitted an amended Plan of Operations for expansion of the existing Denton-Rawhide Mine located approximately 55 miles southeast of Fallon, Nevada. The proposed operation would include: Development and condemnation drilling necessary for development of future operations; expansion of the open-pit and waste rock disposal area; construction of an additional leach pad and solution ponds to accommodate processing of Run-of-Mine ore; and the relocation of the stormwater diversion channel beyond the limits of the active mine workings. Existing permitted surface disturbance within the project area is 1,086 acres. The proposal would disturb an additional 426 acres for a total of 1,512 acres disturbance of public and private land within the project area.

The Environmental Impact Statement will address: surface and groundwater quantity and quality; geology and minerals; air quality; vegetation resources; soils; wildlife; threatened, endangered, or candidate animal and plant species; range resources; land uses and access; recreation; social and economic values; cultural resources; reclamation; hazardous materials; and cumulative impacts. These topics will be evaluated by an interdisciplinary team and will include review of the proposed amended Plan of Operations as well as other pertinent environmental documents and studies. A range of alternatives (including but not limited to alternative reclamation measures and the no-action alternative), as well as mitigating measures, will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the amended Plan of Operations are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the Draft Environmental Impact Statement.

It is important that those interested in the proposal participate in the scoping and commenting processes. Comments should be as specific as possible.

The tentative project schedule is as follows:

Begin Public Comment Period—January 1996
Issuance of Draft Environmental Impact Statement—May 1996
File Final Environmental Impact Statement—August 1996
Record of Decision—October 1996
Begin Expansion of Operation—Spring of 1997

The Bureau of Land Management's scoping process for the Environmental Impact Statement will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives; (3) Notification of interested groups, individuals, and agencies so that additional information concerning these issues, or other additional issues, can be obtained.

Dated: January 11, 1996.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 96–915 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–010–03–1220–01]

Temporary Access Restriction Order for Caliente Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary access restriction to the Washburn Administrative Site in the Carrizo Plain Natural Area located in San Luis Obispo County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action restricts public access to the Washburn Administrative Site on BLM-administered land in the Carrizo Plain Natural Area in order to protect persons, property, and public lands and resources. This restriction is effective for non-operational hours, or as otherwise described in this order, from the date of publication in the Federal Register until adoption of the Management Plan and its amendments for the Carrizo Plain Natural Area. The public lands within the restricted area are located in a portion of E½NE¼ Section 25, Township 32 South, Range 20 East, Mount Diablo Base and Meridian, in the County of San Luis Obispo, State of California, and include that area within fences and gates which enclose the fire station, residential area, offices, and out buildings.

SUPPLEMENTARY INFORMATION: This emergency restriction is intended to prevent unauthorized persons from accessing an administrative site and potentially causing harm to personnel, property, or resources. Hours of operation will be posted and/or available from the BLM Bakersfield office. During non-operational hours, access gates to the administrative site will be closed and locked. Additionally, any person present at the site without lawful purposes is in violation of this order if, after being asked to leave by any employee of the Bureau of Land Management or a Carrizo Plain

cooperator, that person refuses to leave or, after having been notified of this order, enters the site without lawful purpose as described herein. This restriction order applies to all persons except for the reporting of emergencies, official business or activities approved by the authorized officer or Bureau of Land Management personnel in residence at the site. Authority for this restriction order is contained in CFR Title 43, Chapter II, 8364.1(a).

EFFECTIVE DATE: January 24, 1996.

FOR FURTHER INFORMATION CONTACT: James Abbott, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, California 93308; (805) 391–6000.

Dated: January 17, 1996.

James Wesley Abbott,

Caliente Resource Area Manager.

[FR Doc. 96–984 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–1430–01; N–41567–11/31]

Notice of Realty Action: Lease/ Conveyance Amendment for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of Recreation and Public Purpose Lease/Conveyance, N–41567–11/31.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.). The Clark County School District has requested to amend their current R&PP lease to add the adjacent 20 acres to their lease in order to construct a high school.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Section 21, E½NE¼NE¼
Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement in favor of Clark County for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Dr., Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a high school site. 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 local planning and zoning, or if the use is consistent with 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 a high school site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 12, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–923 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–00; N–59514]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Clark County Fire Department proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 24: NW¼NW¼SW¼NW¼.
Containing 2.500 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for public road purposes which have been granted to Clark County by Permit No. N–58555 under the Act of October 21, 1976 (43USC1761).

2. Those rights for telephone line purposes which have been granted to Sprint Central Telephone Company by Permit No. N–10688 under the Act of March 4, 1911 (43USC961).

3. An easement 30.00 feet in width along the north boundary to include a 25.00 foot radius spandrel at the

northwest corner, (the intersection of Agate and Jones).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a fire station. 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 local planning and zoning, or if the use is consistent with 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 a fire station.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 12, 1996.

Micheal F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–924 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–942–06–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION: 1. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on January 11, 1996. This date supersedes the previous date of December 19, 1995 which occured during the partial shutdown of the Federal government.

The plat, in two sheets, representing the dependent resurvey of a portion of the south boundary of Township 30 North, Range 58 East; and the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of a portion of the south boundary, a portion of the subdivisional lines, and the subdivision of certain sections, Township 29 North, Range 58 East, Mount Diablo Meridian, Nevada, under Group No. 737, was accepted October 19, 1995. This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those lands listed under item 1 are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to January 11, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. The above-listed survey is now the basic record for describing the lands for all authorized purposes. This survey has been placed in the open files in the BLM Nevada State Office and is available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 11, 1996.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 96–916 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Outer Continental Shelf, Alaska Region, Gulf of Alaska/Yakutat Lease Sale 158

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings.

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1997 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Gulf of Alaska. The proposed Gulf of Alaska/Yakutat Sale 158 will offer for lease approximately 5.3 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. Copies can be requested by telephone, (907) 271–6070.

Copies of the draft EIS will also be available for inspection in the following public libraries:

A. Holmes Johnson Memorial Library, Kodiak, AK
Akhiok Community School Library, Akhiok, AK
Alaska Pacific University, Academic Support Center Library, Anchorage, AK
Alaska Resources Library, Anchorage, AK
Alaska State Library, Juneau, AK
American Petroleum Institute Library, Washington, D.C.
Anchor Point Public Library, Anchor Point, AK
Chenega Bay Community School Library, Chenega Bay, AK
Chiniak Public Library, Chiniak, AK
Cordova Public Library, Cordova, AK
Craig Public Library, Craig, AK
Esther Greenwald Library, Hoonah, AK
Fish & Wildlife Service Library, Anchorage, AK
Haines Borough Public Library, Haines, AK
Homer Public Library, Homer, AK
Hydaburg School Library, Hydaburg, AK
Irene Ingle Public Library, Wrangell, AK
Jesse Wakefield Memorial Library, Port Lions, AK
Juneau Public Libraries, Juneau, AK
Kake City Community/School Library, Kake, AK
Karluk Community School Library, Karluk, AK
Kasilof Public Library, Kasilof, AK
Kenai Community Library, Kenai, AK
Kenai Peninsula College Library, Soldotna, AK

Kenai Peninsula College Library, Homer, AK
Kettleson Memorial Library, Sitka, AK
Larsen Bay Community School Library, Larsen Bay, AK
Kodiak College Library, Kodiak, AK
Metlakatla Jr/Sr High School Library, Metlakatla, AK
Nanwalek Community School Library, Nanwalek, AK
Oil Spill Public Information Center Library, Anchorage, AK
Old Harbor Library, Old Harbor, AK
Ouzinkie Community School Library, Ouzinkie, AK
Pelican Public Library, Pelican, AK
Petersburg Public Library, Petersburg, AK
Port Graham Community School Library, Port Graham, AK
Prince William Sound Community College Library, Cordova, AK
Sand Point School Library, Sand Point, AK
Seldovia Public Library, Seldovia, AK
Seward Community Library, Seward, AK
Soldotna Public Library, Soldotna, AK
State of Alaska, DEC Library, Juneau, AK
State of Alaska, Dept. of Fish and Game Library, Anchorage, AK
Tatitlek Community School Library, Tatitlek, AK
Tenakee Springs Public Library, Tenakee Springs, AK
U.S. Army Corps of Engineers Library, Anchorage, AK
University of Alaska Consortium Library, Anchorage, AK
University of Alaska Elmer E. Rasmuson Library, Fairbanks, AK
University of Alaska, Seward Marine Center Library, Seward, AK
University of Alaska—Southeast Library, Juneau, AK
Valdez Public Library, Valdez, AK
Whittier Public Library, Whittier, AK
Yakutat High School Library, Yakutat, AK
Z.J. Loussac Public Library, Anchorage, AK

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

February 20, 1996, University Plaza Building, Minerals Management Service, 3rd Floor Conference Room, 949 East 36th Avenue, Anchorage, Alaska, 12:00 p.m. (noon)
February 21, 1996, Yakutat High School, Yakutat, Alaska, 7:00 p.m.
February 22, 1996 Mount Eccles Elementary School, Cordova, Alaska, 7:00 p.m.

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Paul Lowry by telephone (907) 271–6574 or toll free 1–800–764–2627 by February 16, 1996.

Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until April 25, 1996. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until April 25, 1996, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: January 18, 1996.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 96–975 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

General Management Plan, Tumacacori National Historical Park; Notice of Availability of Supplement to the Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Supplement to the Draft Environmental Impact Statement assessing the potential impacts of a proposed General Management Plan for Tumacacori National Historical Park, Arizona.

The Supplement describes and evaluates the impacts of an additional alternative for resource preservation and visitor use management at the Park. The new alternative was developed in response to public comments on the Draft General Management Plan and Environmental Impact Statement which was circulated for public review in late 1993. The alternative described in the Supplement is the new National Park Service proposed action for the Park.

Copies of the Supplement may be obtained from the Superintendent, Tumacacori National Historical Park, P.O. Box 67, Tumacacori, Arizona. 85640. The telephone number is (520) 398–2341. Copies are also available for inspection at libraries located in the Park's vicinity.

Comments and questions regarding the Supplement should be directed to the Superintendent at the above address. All comments must be received by the Superintendent no later than April 5, 1996 in order to be considered in preparation of the final plan.

Dated: January 12, 1996.

Stanley T. Albright,

Field Director, Pacific West Area.

[FR Doc. 96–1067 Filed 1–23–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and section 7003(d) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d), notice is hereby given that a proposed partial consent decree in *United States and Commonwealth of Pennsylvania* v. *Publicker Industries Inc., et al.,* Civil Action No. 90–7984, was lodged on December 28, 1995, with the United States District Court for the Eastern District of Pennsylvania. The proposed partial consent decree would settle an action brought under section 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), 9613(g)(2), against defendants, Publicker Industries Inc. and American Cryogas Industries, Inc. (now called Sagrocry, Inc.) (collectively, ''the Settling Defendants''), for recovery of response costs and natural resource damages in connection with the Publicker Industries Superfund Site in Philadelphia, Pennsylvania (''the Site''). The partial consent decree also resolves the potential CERCLA liability of federal agencies that were involved with the Site during World War II, and resolves

the liability of the Settling Defendants to the Commonwealth of Pennsylvania for response costs and natural resource damages in connection with the Site. Under the terms of the partial consent decree, the Settling Defendants will pay a total of $13.35 million, plus interest, to the United States, and $1 million, plus interest, to the Commonwealth. The United States, on behalf of the settling federal agencies, will contribute $500,000 to the EPA Hazardous Substance Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and Commonwealth of Pennsylvania* v. *Publicker Industries Inc., et al.*, D.J. No. 90–11–3–689. In addition, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), any member of the public who desires a public meeting in the area affected by the proposed partial consent decree in order to discuss the proposed partial consent decree prior to its final entry by the court may request that such a meeting be held. Any such request for a public meeting should be submitted within fifteen (15) days from the date of this publication and sent to the same address and bear the same reference as indicated above for submission of comments.

The proposed partial consent decree may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $22.00 (25 cents per page reproduction costs) payable to the consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 96–1044 Filed 1–23–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

January 18, 1996.

The Department of Labor has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Office, Theresa M. O'Malley (202) 219–5095. Comments and questions about the ICR listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 within 30 days from the date of this publication in the Federal Register. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10325, Washington, DC 20503 (202) 395–7316.

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Bureau of Labor Statistics

Title: Census of Fatal Occupational Injuries

OMB Number: 1220–0133

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS CFOI–1	*	2,500	Once	20 minutes.
Source documents	Federal Government; State, local or tribal governments	165	152	10 minutes.

*Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Total Burden Hours: 5,000

Description: The Census of Fatal Occupational Injuries provides policymakers and the public with comprehensive, verifiable, and timely measures of fatal work injuries. It compiles information—including characteristics of the fatal incident, the employer and the deceased—useful for developing prevention strategies.

Agency: Employment and Training Administration

Title: Data Collection Instruments for the Youth Fair Change (YFC) Program Evaluation: Participant Follow-up Questionnaire

OMB Number:

Frequency: One Time

Affected Public: Individuals or households

Number of Respondents: 4,800

Estimated Time Per Respondent: 20 minutes

Total Burden Hours: 1,600

Description: The information collected in this questionnaire is necessary for a Congressionally required evaluation of the Youth Fair Chance (YFC) program. This submission, which is the second of two related submissions, requests clearance of the participant follow-up questionnaire, which obtains data from participants six months after their initial contact with the YFC program. The data provided information about participants' program experience and outcomes.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–986 Filed 1–23–96; 8:45 am]

BILLING CODE 4510–24–M

Occupational Safety and Health Administration

Updating Permissible Exposure Limits (PELS) for Air Contaminants; Meeting

AGENCY: The Occupational Safety and Health Administration, Labor.

ACTION: Notice of Public Meeting on Updating Permissible Exposure Limits (PELs) for Air Contaminants.

DATE AND TIME: Thursday, February 22, 1996; 9 a.m. to 5 p.m.

PLACE: Frances Perkins Building, Auditorium, 200 Constitution Ave., NW, Washington, DC 20210. Metro, Judiciary Square Station on the Red Line.

PUBLIC PARTICIPATION: The meeting is open to the public. The room accommodates approximately 240 persons. Pre-registration requested for all participants and required for those planning on making a brief presentation. To register, please send the following information by mail or fax to Julia Pešák at: US Department of Labor/OSHA, Rm. N 3718, 200 Constitution Ave., NW., Washington, DC 20210 Fax: (202) 219–7125

Or, to register by e-mail, send the same information to Lyn Penniman at: lynp@osh3.osha.gov

Information required to register: Name of participant, Organization represented by participant, Topic(s) participant desires to address, Approximate time requested for each topic, maximum of 15 minutes total for each participant.

Registration deadline: Received by Monday, February 12, 1996.

Registration confirmation: OSHA will confirm all registrations received by the deadline. OSHA will chair the meeting and allot time to cover the agenda and permit differing viewpoints to be aired.

AGENDA FOR PUBLIC MEETING: The first portion of the public meeting will include background information on OSHAs past effort and current strategy for updating Permissible Exposure Limits (PELs), followed by a general discussion of OSHAs method for identifying substances for inclusion in the current phase of rulemaking. The second portion will cover significance of risk, risk assessment methodology as applied to both carcinogenic and noncarcinogenic end points, and feasibility analysis methodology.

FOR FURTHER INFORMATION: Call Phyllis Yates or Julia Pešák at (202) 219–7111. Please note that registrations will not be accepted by telephone.

SUPPLEMENTARY INFORMATION:

Background

When the Occupational Safety and Health Administration was established in 1971, the Agency was given two years to adopt existing federal and national consensus standards. Among other standards, OSHA adopted Threshold Limit Values (TLVs) from the American Conference of Governmental Industrial Hygienists (ACGIH), which in turn had become federal standards under the Walsh-Healy Act. These limits, in addition to exposure limits from the American National Standards Institute (ANSI), were codified in the Code of Federal Regulations (CFR) as Permissible Exposure Limits (PELs) in § 1910.1000, Subpart Z. Subpart Z became known as OSHAs Z-Tables, and were enforced by OSHA to protect the health of workers from adverse health effects associated with overexposure to air contaminants in general industry. Minor differences in regulatory history resulted in slightly different limits for the construction and maritime industries.

In the 1980s, it became widely recognized that many of the limits in OSHAs Z-Tables were outdated, and in 1988 OSHA proposed to update approximately 420 of its PELs in its air contaminants rulemaking. The newer PELs were based on more recent scientific information, and that information indicated that all but one of the new PELs needed to be more protective of worker health than were the old limits. OSHA utilized in part the recommendations made by the ACGIH and the National Institute of Occupational Safety and Health (NIOSH) in an effort to streamline the process. Following hearings and written comments OSHA published its final rule on January 19, 1989 (54 FR 2332), reducing 212 PELs, setting 164 PELs for previously unregulated substances, and raising one PEL. OSHA proposed to expand coverage of that rule to the construction and maritime industries on June 12, 1992 (57 FR 26002).

Legal challenges to the standard by industry and labor groups were consolidated and heard in the Eleventh Circuit Court of Appeals. In July of 1992 the Court issued its decision (*American Federation of Labor and Congress of Industrial Organizations* v. *Occupational Safety and Health Administration*, 965 F. 2d 962). It stated, in essence, that OSHA should perform quantitative analysis of risk for noncancer endpoints where possible, that more extensive discussions of the health evidence for each substance was needed, and that feasibility analysis should be more detailed. Though only some of the substances were individually challenged, the entire revised air contaminants standard was vacated and remanded back to the Agency. Consequently, the Agency was obligated to revert back to enforcing the limits set in the early 1970s.

Purpose

Establishing an ongoing mechanism for updating its PELs continues to be a high priority for the Agency. OSHA seeks comment on the current phase of its plan to establish an ongoing, iterative process for updating outmoded Permissible Exposure Limits (PELs). Future phases will differ from the current phase and include a mechanism for establishing PELs for appropriate new substances (not currently regulated) under § 1910.1000, subpart Z. This meeting will be the second on the topic of PELs with interested stakeholders since the standard was remanded in 1992.

The Agency intends to publish a proposal to update PELs for a group of approximately 20 substances in the late spring of 1996. Subsequent to the previous public meeting in July 1995, OSHA has further narrowed its likely priority candidates for proposed PEL rulemaking. The substances included below represent OSHA's current intentions regarding the substances to be included in the air contaminants proposal. The actual proposal, when published, may add or drop a small number of substances.

The list of substances currently slated for rulemaking, along with the agenda of the meeting (including a brief discussion of risk assessment and significance of risk issues of interest to OSHA), are provided here for the purpose of focusing and facilitating substantive discussion during the public meeting for stakeholders. The purpose of this meeting is to discuss those general issues which are germane to the current air contaminants rulemaking. It is not OSHA's intent to discuss health effects information and other issues relevant only to specific substances at this particular meeting. The regulatory process will provide ample opportunity for interested parties to submit oral and written comments on specific substances.

Current Candidates for Proposed Air Contaminants Rulemaking:

Carbon disulfide
Carbon monoxide
Chloroform
Dimethyl sulfate
Epichlorohydrin
Ethylene dichloride
Glutaraldehyde
n-Hexane
2–Hexanone
Hydrazine
Hydrogen sulfide
Manganese & compounds
Mercury & compounds
Nitrogen dioxide
Perchloroethylene
Sulfur dioxide
Toluene
Toluene diisocyanate
Trimellitic anhydride
Vinyl bromide

Issue I: Priority-Setting for PEL Chemicals

OSHA requests comment on its selection of priority substances for this first phase of updating PELs. In identifying the priority substances, OSHA (with assistance from NIOSH) evaluated the following criteria: The inherent toxicity of the substance; the number of workers exposed to the substance (and in some cases, the amount of the substance produced); uses of the substance and prevailing exposure levels; the severity of the resulting adverse health effect(s); the availability of information useful in quantitative risk assessment, and the quality of those data; and the potential for risk reduction. Administrative considerations and professional judgement were also factored in to the decision-making process. OSHA feels that this approach, a hybrid of quantitative and qualitative elements rather than a strictly quantitative formula, was appropriate and rational. The criteria used to identify these substances are similar to those used by OSHA's Priority Planning Process Committee to identify the Agency's priorities for regulatory and other actions.

Although these priority substances were identified on the basis of objective criteria, it should not be concluded that these are the only substances in OSHA's Z-Tables that require new PELs, nor that these are necessarily the highest-risk substances. It is important for worker protection that the Agency propose PELs for noncarcinogens as well as carcinogens, and for substances which have health effects that adversely impact workers' quality of life without necessarily affecting mortality. And, while it is important to establish PELs for these particular substances, it is of equal importance to the Agency to begin to lay the groundwork for a regular and iterative process for updating PELs for air contaminants.

Issue II: Risk Assessment Methodology for Carcinogens

OSHA has gained much experience in conducting quantitative risk assessments for carcinogens from past rulemaking efforts. The approaches most often employed by the Agency, which rely on use of the multistage model with animal data and relative risk models with human data to derive dose-response relationships, are well known in the scientific community and have been routinely upheld by reviewing courts. The Agency does not expect to depart significantly from its use of these approaches to derive revised exposure limits for potential carcinogens included in the present rulemaking effort. However, OSHA is interested in hearing discussion on certain issues regarding the details of dose-response modeling for carcinogens, in particular: (1) The appropriateness of relying on maximum likelihood estimates, upper confidence limits, or other summary statistics for carcinogenic potency such as expected values (for example, see Hattis and Goble 1991) to derive exposure limits; (2) approaches that can be taken to address the issue of interindividual variation in response among humans; (3) the use of various interspecies scaling factors when assessing risks from bioassay data; and (4) criteria for evaluating the adequacy of data to determine when it is appropriate to use pharmacokinetic analysis as part of the risk assessment.

Issue III: Risk Assessment Methodology for Noncarcinogens

OSHA is currently exploring the use of techniques to quantify risks of non-neoplastic health effects associated with occupational exposure to hazardous materials. This effort is designed to address the Eleventh Circuit Court decision. OSHA believes that, wherever data permit, conducting quantitative risk assessments for noncancer health endpoints provides the most direct route for establishing new or revised exposure limits in a manner consistent with the Court decision.

A variety of methods for establishing exposure limits based on noncancer health endpoints have been used by regulatory agencies and scientific bodies. One of the most frequently employed methods involves setting exposure limits by applying uncertainty factors to no-observed-adverse-effect (NOAEL) or lowest-observed-adverse-effect (LOAEL) levels reported in human and animal studies. OSHA relied on this approach to a large extent in the 1989 Air Contaminants rulemaking. Although this approach has been widely used in the past, its chief disadvantage is that it provides little or no information on potential risk levels that may be associated with varying magnitudes of exposure, a limitation that was recognized by the Court.

One of the newer approaches being evaluated by OSHA to conduct noncancer risk assessments is known as the ''benchmark dose'' method, originally described by Crump (1984). This method is currently being used by the Environmental Protection Agency (EPA) to establish Reference Doses (RfDs) based on noncancer health effects, and its application has been recently studied and described in detail by EPA's Risk Assessment Forum (EPA, 1995). This approach uses formal modeling techniques similar to those used in cancer risk assessment to develop quantitative dose-response relationships based on either human or animal studies. The models are subsequently used to estimate a benchmark dose associated with a specified excess risk level that lies on or just below the observed range of risks (usually 5 or 10 percent). The EPA document discusses two approaches for deriving references doses from benchmark doses: one employs a system of uncertainty factors to account for individual variation in response, extrapolation from animal to humans, and severity of the effect, while the other approach reduces the benchmark dose by some adjustment factor representing the desired reduction in the magnitude of the risk. Thus, the benchmark dose approach differs from those used in cancer risk assessments in that the models developed are not used to extrapolate risks at very low dose levels. Use of the benchmark dose approach has at least two advantages over the traditional NOAEL/LOAEL method: (1) Quantitative dose-response information can be obtained, which should facilitate regulatory decision making; and (2) the approach provides for greater regulatory consistency between substances since decisions can be based on comparable starting points, i.e., risk levels of 5 or 10 percent.

Thus, OSHA believes that the benchmark dose approach shows promise as a consistent and defensible method by which the Agency can establish reasonable exposure limits based on nonneoplastic health effects. As such, OSHA wishes to hear considerable discussion on the experience of those who are familiar with or who have used this method to evaluate public health risks, and what alternative approaches can be utilized that address issues raised by the Court ruling on the Air Contaminants standard. In particular, OSHA is interested in hearing discussion on how to best implement approaches to derive exposure limits from benchmark dose values, and how these methods can be interpreted in terms of the significance of the risk and the magnitude of risk reduction achieved.

Issue IV: Determination of Significant Risk

For significant risk determinations for carcinogens, OSHA has followed the Supreme Court guidance in the Benzene decision. The Court stated: ''It is the Agencys responsibility to determine in the first instance what it considers to be

a ''significant'' risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it.'' (*Industrial Union Department, AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 601, 655. (1980)). OSHA would welcome comments that would enable it to shed light on the acceptability of risk levels within this million-fold range.

OSHA has had less experience in evaluating significant risk for the broad range of other adverse health effects experienced by workers who are exposed to hazardous levels of chemical substances. OSHA invites discussion on appropriate risk levels for effects such as neurotoxicity, reproductive effects, and organ toxicity that may represent significant risks, and on appropriate criteria (such as severity and reversibility of the effect) that should be considered to determine when risks of a given magnitude represent a significant risk.

References

Crump, K.S. 1984. A new method for determining allowable daily intakes. *Fund. Appl. Toxicol.* 4:854–871

Environmental Protection Agency. February 1995. The Use of the Benchmark Dose Approach in Health Risk Assessment. Publication No. EPA/630/R–94/007, Washington, DC.

Hattis, D. And Goble, R.L. 1991. Expected values for projected cancer risks from putative genetically acting agents. *Risk Analysis* 11:359–363

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for the Occupational Safety and Health, 200 Constitution Ave. NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of January, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–952 Filed 1–23–96; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 96–001]

National Environmental Policy Act; Near Earth Asteroid Rendezvous 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 Near Earth Asteroid Rendezvous (NEAR) mission, which would involve a flight to and orbit about the near Earth asteroid (433) Eros. The baseline mission calls for the NEAR spacecraft to be launched aboard a Delta II 7925 from Cape Canaveral Air Station (CCAS), Florida, in February 1996.

DATES: Comments on the FONSI must be provided in writing to NASA on or before February 23, 1996.

ADDRESSES: Written comments should be addressed to Ms. Elizabeth Beyer, NASA Headquarters, Code SLP, 300 E Street SW, Washington, DC 20546. The Environmental Assessment (EA) prepared for the NEAR 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. Elizabeth Beyer at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beyer, 202–358–0314.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the NEAR 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 NEAR mission, which would deliver a single orbiting spacecraft to Eros in 1999. Following launch and injection into a heliocentric transfer orbit in February 1996, there would be an Earth swingby in January 1998 which will change the heliocentric orbital inclination by about 10 degrees to intercept the orbit of Eros. The initial flyby of Eros would be at a closest approach distance of 500 kilometers (km) (310 miles (mi.)) and would allow an initial reconnaissance of Eros by several instruments and an initial determination of mass and rotational state. Orbital insertion about Eros would occur a few days later in a circular 1000 km (621 mi.) orbit, followed a few weeks later by insertion into a circular 200 km (124 mi.) orbit face-on to the direction of Earth. The orbit would then be lowered in stages, as the asteroid shape and gravity models are refined, until the nominal rendezvous orbit radius of 35 km (22 mi.) is attained. The spacecraft carries no radioactive material, except for a minor calibration source which consists of 30 microcuries of Fe^{55} (iron-55). 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 NEAR spacecraft into its heliocentric transfer orbit.

The science objective for the NEAR mission is to investigate the properties of a single asteroid, the rendezvous target, 433 Eros. Near earth asteroids are of fundamental scientific importance they may preserve clues to early solar system processes and to conditions

during the formation and early evolution of the planets. Measurements from five instruments would provide the data which should accomplish the science objectives. These objectives include detailed studies of surface processes such as the formation of soil from rocks and surface characteristics of these very low gravity bodies. The study of Eros is expected to provide data to characterize asteroid physical and geological properties and indicate elemental and mineralogical composition. Data collected by NEAR could also provide important information on the search for intrinsic magnetization of the asteroid.

Alternatives that were evaluated include: (1) No-Action (*i.e.*, no NEAR 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 NEAR 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 NEAR mission would delay or eliminate the gathering of potentially important data needed to study the origin and evolution of our solar system. Of the launch vehicles evaluated, the Delta II 7925/PAM–D most closely matches the NEAR 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 122 km (76 mi.), 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 NEAR 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 has 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 NEAR 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: January 17, 1996.

Wesley T. Huntress, Jr.,

Associate Administrator for Space Science.

[FR Doc. 96–917 Filed 1–23–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Advisory Committee Meetings

With the combination of the Federal Government furlough and the blizzard, NSF was unable to provide timely notice of a number of advisory committee meetings that had been scheduled. The list below provides notice of these meetings in accord with the Federal Advisory Committee Act (Pub. L. 92–463.

1. Special Emphasis Panel in Graduate Education (57)
   Date: February 4–10, 1996 and February 14–16, 1996
   Contact: Susan Duby at 703–306–1694
   Agenda: To review and evaluate applications submitted to the Graduate Research Fellowship Program
2. Special Emphasis Panel in Chemical & Transport Systems (1190)
   Date: January 22, 1996
   Contact: Farley Fisher at 703–306–1370
   Agenda: To review and evaluate Faculty Early Career Award proposals
   Date: January 22–23, 1996
   Contact: Roger Arndt at 703–306–1371
   Agenda: To review and evaluate nominations for the Faculty Early Career Award proposals
   Date: January 22, 1996
   Contact: Maria Burka at 703–306–1370
   Agenda: To review and evaluate Faculty Early Career Award proposals submitted to the Chemical Reaction Processes Program
   Date: January 24, 1996
   Contact: Milton Linevsky at 703–306–1370
   Agenda: To review and evaluate Faculty Early Career Award proposals
   Date: January 29, 1996
   Contact: Farley Fisher at 703–306–1370
   Agenda: To review and evaluate Engineering Research Equipment Award
   Date: January 30, 1996
   Contact: Robert Wellek at 703–306–1371
   Agenda: To review and evaluate nominations for the FY96 Research Equipment Grant proposals
3. Special Emphasis Panel in Chemical (1191)
   Date: January 29, January 29–30, February 12–13, and February 13, 1996
   Contact: Karolyn Einstein at 703–306–1850
   Agenda: To review and evaluate proposals submitted to the Faculty Early Career Development Program
   Date: February 8–9, 1996
   Contact: Karolyn Einstein at 703–306–1850
   Agenda: To review and evaluate applications for Postdoctoral Fellowships in Chemistry
4. Special Emphasis Panel in Cross Disciplinary Activities (1193)
   Date: January 22, 1996
   Contact: Rita Rodriguez 703–306–1980
   Agenda: To review and evaluate CISE Postdoctoral Research Associates in Computational Science and Engineering.
5. Special Emphasis Panel in Electrical and Communications Systems (1196)
   Date: January 25, 1996
   Contact: Deborah Crawford or George Lea at 703–306–1340
   Agenda: To review and evaluate Computational Engineering proposals
   Date: February 1, 1996
   Contact: Paul Werbos at 703–306–1340
   Agenda: To review and evaluate Neuroengineering proposals
6. Special Emphasis Panel In Human Resource Development
   Date: January 24, 25, 26, 31, 1996
   Contact: Betty Ruth Jones and Alexandra King at 703–306–1633
   Agenda: To review and evaluate Comprehensive Partnerships for Minority Student Achievement Proposals
7. Special Emphasis Panel in International Programs (1201)
   Date: January 25–26, 1996
   Contact: Randy Soderquist at 703–306–1701
   Agenda: To review and evaluate Summer Programs in Japan proposals
   Date: February 5–6, 1996
   Contact: Susan Parris or Randy Soderquist at 703–306–1701

Agenda: To review and evaluate International Research Fellow Award proposals

8. Special Emphasis Panel in Materials Research (1203)
Date: January 26 & 31, 1996
Contact: Lorretta Inglehart at 703–306–1817
Agenda: To review and evaluate Instrumentation proposals

Date: February 9, 1996
Contact: Andrew Lovinger at 703–306–1839
Agenda: To review and evaluate DMR 1996 Faculty Early Career Development Program proposals

9. Special Emphasis Panel in Mathematical Sciences (1204)
Date: January 22–23 & February 5–6 1996
Contact: Joe Jenkins at 703–306–1879
Agenda: To review and evaluate the Analysis Program nominations and applications

Date: January 22–23 & February 8–9, 1996
Contact: Deborah Lockhart at 703–306–1882
Agenda: To review and evaluate proposals in the Applied and Computational Mathematics Programs

Date: January 25–26, 1996
Contact: Alvin Thaler at 703–306–1880
Agenda: To review and evaluate proposals concerning Algebraic Geometry

10. Special Emphasis Panel in Civil & Mechanical Systems (1205)
Date: January 30 and February 1–2, 1996
Contact: Priscilla Nelson at 703–306–1361
Agenda: To review and evaluate civil and mechanical systems proposals

11. Special Emphasis Panel in Undergraduate Education
Date: January 30–31, 1996
Contact: Herbert Levitan at 703–306–1669
Agenda: To review and evaluate proposals submitted to the Institution Reform of Undergraduate Education Program.

12. Special Emphasis Panel in Biological Sciences (1754)
Date: January 22–23, 1996.
Contact: Carter Kimsey at 703–306–1469
Agenda: To review and evaluate proposals concerning Molecular Evolution

Date: February 12–14, 1996
Contact: Carter Kimsey at 703–306–1469
Agenda: To review and evaluate proposals concerning Biosciences related to the environment

Times: 8:30 to 5:00 p.m. each day.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA. 22230.
Type of Meetings: Closed.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 18, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–908 Filed 1–23–96; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 7, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 7, 1996—1:30 Noon until 4 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 18, 1996.
Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 96–963 Filed 1–23–96; 8:45 am]
BILLING CODE 7590–01–P

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Baltimore Gas and Electric Company (BGE or the licensee) to withdraw its July 13, 1995, application for proposed amendments to Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Lusby, Maryland.

The proposed amendment would have revised the Technical Specification 5.2.1, Fuel Assemblies, to allow the use of cladding materials other than Zircaloy or ZIRLO.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the Federal Register on August 30, 1995 (60 FR 45174). However, by letter dated December 21, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 13, 1995, and the licensee's letter dated December 21, 1995, which withdrew the application for the license amendments. 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 Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Md., this 17th day of January 1996.

For the Nuclear Regulatory Commission.
Daniel G. McDonald,
Senior Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.
[FR Doc. 96–964 Filed 1–23–96; 8:45 am]
BILLING CODE 7590–01–P

[Docket No. 50–029–DCOM; ASLBP No. 96–713–01–DCOM]

Yankee Atomic Electric Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and supplemental petitions to intervene and to preside over the proceeding in the event that a hearing is ordered:

YANKEE ATOMIC ELECTRIC COMPANY
Yankee Nuclear Power Station
Decommissioning Plan

This Board is being established pursuant to a notice published by the Commission on October 27, 1995, in the Federal Register (60 F.R. 55069). The petitioners, Citizens Awareness Network and New England Coalition on Nuclear Pollution, seek to intervene and request a hearing. The Commonwealth of Massachusetts has also filed a notice of participation in the proceeding.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Thomas S. Elleman, 704 Davidson Street, Raleigh, NC 27609

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 17th day of January 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–962 Filed 1–23–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36726; File No. SR–Amex–95–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Restrictions on Specialists

January 17, 1996.

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 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 190 and 950 regarding restrictions on specialists.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex adopted most of its restrictions on the activities of specialists in the early 1960s. The effect of these restrictions was to limit the business activities of specialists (and their affiliates) to acting as a ''broker's broker'' and as a dealer on the Exchange Floor. These restrictions also precluded specialists from making public statements regarding their specialty securities. In 1973, the Exchange added a gloss on the public statement restriction, prohibiting specialists from making, ''an advertisement identifying a firm as a specialist in any security.'' [1] Even though the New York Stock Exchange (''NYSE'') and Amex generally have comparable rules with respect to restrictions on specialists, the NYSE never adopted the 1973 gloss.

In 1975, with the implementation of trading in standardized options, the Exchange generally extended the restriction on stock specialists to options specialists. It modified, however, the prohibition on business transactions between specialists and the issuer of a specialty security (Rule 190(a)), to prohibit business transactions between an options specialist and the issuer of the security underlying a specialty option (Rule 950(k)).[2]

In 1987, the Chicago Board Options Exchange (''CBOE'') instituted its Designated Primary Market-Maker (''DPM'') system for trading listed options.[3] While the CBOE adopted a number of the restrictions applicable to Amex options specialists, it did not apply any of the restrictions applicable to Amex specialist communications to its DPMs.[4]

The discrepancy between the rules of the Amex and the CBOE regarding specialist communications had little practical significance prior to the general implementation of multiple options trading. The Exchange is now finding, however, that the disparate regulation of specialists and DPMs has placed it at a disadvantage in the competition for order flow in a multiple trading environment. The Amex, accordingly, proposes to amend its rules to lift the prohibition against ''popularizing'' an option or a derivative

[1] See Commentary to Amex Rule 190.

[2] Since the Options Clearing Corporation (''OCC'') is the issuer of all listed options and the ''business transaction'' prohibition was intended as a prophylactic measure to prevent the passage of non-public information between specialist and issuer, the policy reason behind Rule 190(a) would not have been advanced had the Exchange simply prohibited business transactions between the OCC and an options specialist.

[3] Like a specialist, a DPM has primary market making responsibilities.

[4] See CBOE Rules 8.80 and 8.81, and Securities Exchange Act Release Nos. 24934 (September 22, 1987), 52 FR 36122 (September 25, 1987) and 25151 (November 23, 1987), 52 FR 45417 (November 27, 1987). The CBOE's rules provide that an integrated broker-dealer affiliated with a DPM must establish an exchange approved ''Chinese Wall'' between the upstairs firm and the DPM and make certain disclosures if it intends to issue recommendations or research reports regarding DPM securities and the underlying. There are no specific restrictions, however, on DPM communications regarding their specialty securities.

security. It will leave in place the restriction against popularizing the underlying security, subject of course to the exceptions that have long been contained in Amex Rule 950. This will better conform the Amex rules to those applicable to DPMs at the CBOE regarding communications concerning specialty securities.

In addition, the Exchange is also proposing two other changes to the restrictions on popularizing by specialists. The Exchange seeks to conform its rules to those of the NYSE to eliminate generally the prohibition on communications that simply identify a firm as the specialist in a particular security. Finally, the Exchange seeks to amend its rules regarding equity derivative[5] specialists to harmonize them with restrictions on options specialists. Thus, the Exchange would amend its rules to prohibit material business transactions between certain equity derivative specialists and the issuer of the security underlying the equity derivative.[6]

Of course, all options specialists would remain subject to the rules regulating the conduct and public communications of members generally (*e.g.*, Exchange Rule 991, the ''options advertising'' rule). In addition, all other restrictions applicable to specialists and their affiliates would remain in place. Thus, specialists and their affiliates still would be prohibited from trading a specialist security outside the specialist function (Rules 170(e) and 950(n)), holding or granting an option on a specialty stock (Rule 175), engaging in a business transaction with either the issuer of a specialty security or the underlying security in the case of options (Rules 190(a) and 950(k)), and accepting orders from the issuer of a specialty security, its insiders and enumerated institutional investors (Rules 190(b) and 950(k)).[7]

The Exchange represents that the respective proposed rule changes either seek to conform the Exchange's rules to those of the CBOE and NYSE, or represent a rational harmonization of the regulation of listed options and equity derivatives. In addition, the Exchange believes that changes in market structure, the role of the specialist in the secondary market, and enhanced surveillance capabilities over the last thirty years have eliminated the need for continuation of at least certain of the original specialist prohibitions. This is most clearly true with respect to the wholesale application of restrictions on stock specialists to options specialists, due to the derivative pricing of the specialty securities. This is most clearly demonstrated by the experience of the CBOE, which has been able to adequately regulate its DPMs without the use of such wholesale restrictions. Finally, the Exchange believes that the experience of the NYSE demonstrates that with respect to all specialists there is no need to go so far as to preclude even the public identification of a particular firm as the specialist in particular securities.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and further the objectives of section 6(b)(5) in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden Competition

The Amex 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–54 and should be submitted by February 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1030 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[5] The term ''equity derivative'' refers to an underwritten security the value of which is determined by reference to another security, or to a currency, commodity, interest rate or index of the foregoing. Such securities are commonly listed pursuant to Amex Company Guide (''Guide'') Sections 106 (''Index and Currency Warrants''), 107 (''Other Securities''), 118 (''Investment Trusts''), or Amex Rule 1002 (''Portfolio Depositary Receipts'').

[6] It is in the case of listings under sections 107 and 118A of the Guide that the underlying can be a single security, so that restrictions analogous to those applicable to equity options are appropriate.

[7] Exchange Rule 193 permits the affiliates of specialists to obtain an exemption from most specialist restrictions through the use of an Exchange-approved ''Chinese wall''.

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–36733; File No. SR–Amex–95–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Fee Changes

January 17, 1996.

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 21, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase its options transaction charge, options floor brokerage fee, and CRD fee, as well as adopt a new technology fee.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is increasing three charges imposed on members and member organizations. The options transaction charge for specialist and market maker proprietary trades is being increased from $.07 to $.08 per contract side for equity option contracts and from $.11 to $.12 per contract side for index option contracts. An option floor brokerage fee, currently imposed on all customer and non-market making member firm principal activity at the rate of $.03 per contract side, will now also be imposed on all specialist and market maker proprietary trades at the rate of $.02 per contract side. The fees charged to member firms for registering sales personnel through the CRD System are being increased from $25 to $30 for renewals, from $20 to $25 for terminations, from $45 to $55 for initial registration, and from $30 to $40 for transfers.

The Exchange is also imposing a new technology fee of $1,200 per year on all members to help offset the costs associated with the Exchange's continued investment in trading floor technology. All of the above fees are scheduled to take effect on January 1, 1996.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that they provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The fee changes have become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(2) of Rule 19b–4. At any time within 60 days of the filing of such fee changes, the Commission may summarily abrogate such fee changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making 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 coping at the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–55 and should be submitted by February 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1031 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36727; File No. SR–MSRB–95–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants

January 17, 1996.

On September 28, 1995,[1] the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends rules G–8[4] and G–9,[5] on recordkeeping and record retention, rule G–37,[6] on political contributions and prohibitions on municipal securities business, and adds a new rule G–38 regarding consultants. The proposed rule change also amends MSRB Form G–37, and redesignates it as Form G–37/G–38.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 36522, November 28, 1995) and by the publication in the Federal Register (60 FR 62275, December 5, 1995). One comment letter was received.[7] This order approves the proposed rule change.

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] On November 15, 1995, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Jill C. Finder, Assistant General Counsel, MSRB, to Ethan D. Corey, Senior Counsel, Division of Market Regulation, Commission, dated November 15, 1995.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] MSRB Manual, General Rules, G–8 (CCH) ¶ 3536.

[5] MSRB Manual, General Rules, G–9 (CCH) ¶ 3541.

[6] MSRB Manual, General Rules, G–37 (CCH) ¶ 3681.

[7] Letter from David J. Rubin (''Rubin'') to Jonathan G. Katz, Secretary, Commission, dated December 6, 1995 (''Rubin Letter'').

I. Introduction

The rule change approved today will require brokers, dealers and municipal securities dealers (collectively, ''municipal securities firms'') to enter written agreements with ''consultants,'' as defined in rule G–38, and to disclose such arrangement to issuers and to the public through disclosure to the Board. It is the latest in a series of actions taken by the Commission and the MSRB to combat abuses associated with the awarding of municipal securities business. The Commission approved rule G–37 on April 7, 1994 in order to cleanse the municipal securities market of pay-to-play practices. Rule G–37 prohibits, among other things, any municipal securities firm from engaging in municipal securities business with an issuer if: (i) it; (ii) any municipal finance professional associated with it; or (iii) any political action committee controlled by it or any of its municipal finance professionals has contributed to an official of that issuer within the previous two years.[8] The rule also provides that no municipal securities firm or any of its municipal finance professionals shall, directly or indirectly, through or by any other means, do any act that would result if a municipal securities firm engages in municipal securities business with an issuer after directing third parties (such as consultants) to make contributions to that issuer. In addition to recording and disclosing political contributions, rule G–37 currently requires municipal securities firms to record and disclose on Form G–37 those issuers with which those firms have engaged in municipal securities business and, where applicable, the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain business with such issuers. The United States Court of Appeals for the District of Columbia Circuit, in rejecting a challenge to rule G–37, noted that ''the link between eliminating pay to play practices and the Commission's goals of 'perfecting the mechanism of a free and open market' and promoting 'just and equitable principles of trade' is self-evident.'' [9]

Rule G–37 complements rule G–20, on gifts and gratuities, which prohibits dealers from, directly and indirectly, giving or permitting to be given any thing or service of value, including gratuities, in excess of $100 per year to any person, other than an employee of partner of the municipal securities firm, in relation to the municipal securities activities of the person's employer. All gifts given by the municipal securities firm and its associated persons, or by consultants at the direction of the municipal securities firm, are used to compute the $100 limitation and this limitation applies to gifts and gratuities to customers, individuals associated with issuers, and employers of other municipal securities firms.[10]

In addition to these initiatives, the Commission has brought several actions against participants in the municipal securities market in connection with payments made by underwriters to agents or employees of issuers in order to secure municipal securities business. In one instance, the Commission found that an employee of a municipal securities underwriter provided certain benefits to an elected public official of an issuer during a time when that official has an important role in selecting the underwriter for municipal securities issued by that issuer.[11] In another instance, the Commission found that employees of a municipal securities underwriter made undisclosed payments to a third party to assure that underwriter's continued participation as book-running senior manager for a municipal issuer's offering of debt securities.[12] The Commission also found that the same municipal securities underwriter itself engaged in schemes to defraud various municipal issuers and investors by agreeing to pay undisclosed kickbacks to agents of those issuers in exchange for underwriting business.[13]

The Commission notes that past rulemaking initiatives have helped to ensure that municipal securities firms are prohibited from engaging in practices that bring into question the integrity of the municipal securities market and that it has brought enforcement actions to address fraudulent practices in the municipal securities market. However, the Commission is concerned that abusive practices such as those disclosed in the Tuttle and First Fidelity orders do not represent isolated instances of wrongdoing.

The MSRB stated in its filing that it believes that municipal securities firms may employ consultants as a result of limitations placed on municipal securities firm activities by rule G–37 and rule G–20.[14] While both rules prohibit municipal securities from doing indirectly what they are precluded from doing directly, indirect activities often are difficult to prove. The rule approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market.

II. Scope of Rule G–38

Rule G–38, on consultants, does not impose any substantive restrictions on arrangements between municipal securities firms and consultants. Rather, rule G–38 will require municipal securities firms to enter into written agreements with ''consultants,'' as defined in rule G–38, and to disclose such arrangements to issuers and to the public through disclosure to the Board.

A. Definition of Consultant

Rule G–38 defines consultant as any person used by a municipal securities firm to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the municipal securities firm's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the municipal securities firm or any other person.[15] The definition

[8] Rule G–37(b) contains an exception for certain contributions of $250 or less per election made by an municipal finance professional to an official of an issuer for whom that municipal finance professional was entitled to vote.

[9] *Blount* v. *Securities and Exchange Commission*, 61 F.3d 938, 945 (D.C. Circuit 1995); *rehearing and application for rehearing en banc denied* (D.C. Cir. Oct. 4, 1995).

[10] MSRB Reports, vol. 14, no. 1 at 11 (Jan. 1994). Rule G–20(b) exempts ''normal business dealings'' from the $100 annual limit. These payments are defined as occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts of reminder advertising. However, the rule also provides that such gifts can not be so frequent or so expensive as to raise a suggestion of unethical conduct.

[11] See Preston C. Bynum, Securities Exchange Act Release No. 35870 (June 20, 1995), 59 SEC Dock, 1801 (July 18, 1995).

[12] See George l. Tuttle, Jr., and Alexander S. Williams, Securities Exchange Act Release No. 35605 (April 14, 1995), 59 SEC Dock, 330 (May 16, 1995) (''Tuttle'').

[13] See First Fidelity Securities Group, Securities Exchange Act Release No. 36694 (Jan. 9, 1996) (''First Fidelity'').

[14] The MSRB also stated in its filing that it believes that in many instances the use of consultants is appropriate.

[15] ''Person'' is defined in Section 3(a)(9) of the Securities Exchange Act of 1934 as ''a natural person, company, government, or political subdivision, agency or instrumentality ''Municipal securities business' has the same meaning as in rule G–37(g)(vii), *i.e.*, (A) the purchase of a primary offering (as defined in rule A–13(d)) of municipal securities from the issuer on other than a competitive bid basis (*i.e.*, negotiated underwriting); (B) the offer or sale of a primary offering of municipal securities on behalf of any

specifically excludes ''municipal finance professionals,'' as that term is defined in rule G–37(g)(iv), because such individuals are covered by the requirements of rule G–37. The definition also excludes any person whose sole basis of compensation from the municipal securities firm is the actual provision of legal advice, accounting or engineering assistance in connection with the municipal securities business that the municipal securities firm is seeking to obtain or retain. The exclusion would apply, for example, to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the municipal securities firm, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. The exemption is intended to ensure that professionals who are engaged by the municipal securities firm solely to perform substantive working connection with municipal securities business are not brought within the definition of consultant as long as their compensation is in consideration of only those professional services actually provided in connection with such municipal securities business. Any attorney, accountant, engineer or other professional used by the municipal securities firm as a ''finder'' for municipal securities business would, however, be considered a consultant under the proposed rule.

The definition of consultant also will encompass third parties who initiate contact with prospective underwriters to offer their services in obtaining or retaining municipal securities business through direct or indirect communication by such person with an issuer official. The definition does not distinguish between instances in which the municipal securities firm initiates contact and instances in which the third party initiates contact. The touchstone is whether that person is used by a municipal securities firm to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the municipal securities firm's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving payment from the municipal securities firm or any other person. If that person is so used, then that person is a consultant.

B. Written Agreement

Rule G–38 will require municipal securities firms who use consultants to evidence the consulting arrangement in writing (''Consultant Agreement''), and that, at a minimum, the writing must include the name, company, role and compensation arrangement of each consultant used by the municipal securities firm. Such written agreements must be entered into before the consultant engages in any direct or indirect communication with an issuer on the municipal securities firm's behalf.

C. Disclosure to Issuers

Rule G–38 will require each municipal securities firm to disclose to an issuer with which it is engaging or seeking to engage in municipal securities business, in writing, information on consulting arrangements relating to that issuer. The written disclosure must include, at a minimum, the name, company, role and compensation arrangement with the consultant or consultants. Municipal securities firms are required to make such written disclosures prior to the issuer's selection of any municipal securities firm in connection with the municipal securities business sought, regardless of whether the municipal securities firm making the disclosure ultimately is the municipal securities firm that obtains or retains that business.

D. Disclosure to the Board

Rule G–38 will require municipal securities firms to submit to the Board, on a quarterly basis, reports of all consultants used by the municipal securities firm. For each consultant, municipal securities firms must report, in the prescribed format, the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on the municipal securities firm's behalf which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the municipal securities firm must separately identify that business and the dollar amount of the payment. In addition, as long as the municipal securities firm continues to use the consultant to obtain or retain municipal securities business (*i.e.*, has a continuing arrangement with the consultant), the municipal securities firm must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period. The quarterly reporting requirement is intended to assist enforcement agencies and the public in their review of such arrangements.

The rule change approved today deletes the current reporting requirements regarding consultants from rule G–37. Instead, reporting requirements imposed under rule G–37 and rule G–38 will be contained in a single form—new G–37/G–38. Municipal securities firms will be required to submit two copies of such reports on new Form G–37/G–38.[16] The quarterly due dates will be the same as the due dates currently required under rule G–37 (*i.e.*, within 30 calendar days after the end of each calendar quarter, which corresponds to each January 31, April 30, July 31, and October 31). Finally, consistent with current rule G–37, municipal securities firms will be required to submit these reports to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.[17] The Board will then make these documents available to the public for inspection and photocopying at its Public Access Facility in Alexandria, Virginia, and for review by agencies charged with enforcement of Board rules.

E. Recordkeeping Requirements

The rule change approved today also amends rules G–8 and G–9, concerning recordkeeping and record retention, to facilitate compliance with, and enforcement of, rule G–38. The amendments to rule G–8 will require municipal securities firms to maintain: (i) A listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of

issuers (*i.e.*, private placement); (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis; or (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis.

''Payment'' has the same meaning as in rule G–37(g)(viii), *i.e.*, any gift, subscription, loan, advance, or deposit of money or anything of value.

[16] In addition to the new rule G–38 consultant reporting requirements, Form G–37/G–38 includes revisions to the rule G–37 political contribution reporting requirements. Such revisions include, for each contribution, a required notation of the category of the contributor (*e.g.*, municipal finance professional or executive officer) and the amount of the contribution, as well as a separate section for the reporting of ''payments'' to political parties distinct from ''contributions'' to issuer officials.

[17] Rule G–37 Filing Procedures are contained within the language of rule G–37, and rule G–38 Filing Procedures are contained within the language of new rule G–38.

the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to such issuers concerning each consultant used by the municipal securities firm to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G–9 will require municipal securities firms to maintain these records for a six-year period.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the proposed change. The Rubin Letter argued that although the proposed rule change may assist in uncovering payments to third parties that are intended to influence the awarding of municipal securities business, such business will continue to be awarded based on criteria other than merit until issuers are required to select the best underwriters for debt issuance. The Commission agrees with the Rubin Letter that the rule change approved today, standing alone, will not operate to cleanse the municipal market of all practices resulting in issuers awarding municipal securities business on a basis other than the merits of the underwriting firm chosen.[18] As noted above, however, the rule change approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market.

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C)[19] of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission believes that the rule change removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments enhance the ability of municipal securities firms to compete for, and be awarded, municipal securities business on the basis of merit, rather than political or financial influence. Such healthy competition will act to lower artificial barriers to those municipal securities firms not willing or able to hire consultants to obtain or retain municipal securities business, thereby maintaining the integrity of the municipal securities market, as well as the public trust and confidence that is essential to the long-term health and liquidity of the market.

The Commission also believes that the rule change is in the public interest in that the amendments enhance the ability of investors to determine whether an underwriter may have made improper payments in order to secure municipal securities business. The Commission has recognized that ''information concerning financial and business relationships among the parties involved in the issuance of municipal securities may be critical to an evaluation of the underwriting.''[20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–MSRB–95–15 be, and hereby is, approved, effective March 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[18] The MSRB determined not to include within the definition of consultant persons who are engaged by a dealer at the request or direction of the issuer because those persons do not assist the dealer in obtaining or retaining municipal securities business. The MSRB stated in its filing that it will review the issue of ''issuer-designated'' professionals and other issuer involvement in the underwriting process and will address this subject, including the question of requiring disclosure of issuer-designated persons, at a future time. The Commission encourages the MSRB to consider such further initiatives in this area in order to promote the awarding of municipal securities business based on merit.

[19] 15 U.S.C. 78*o*–4.

[20] First Fidelity, *supra* n. 13, quoting Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Securities Act Release No. 7049 (Mar. 9, 1994), 59 FR 12748 (Mar. 17, 1994).

[Release No. 34–36730; File No. SR–CHX–95–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Priority and Precedence of Agency and Professional Orders

January 17, 1996.

I. Introduction

On July 14, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the priority and precedence of agency and professional orders. On July 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36373 (Oct. 16, 1995), 60 FR 54268 (Oct. 20, 1995). No comments were received on the proposal.

II. Description of Proposal

Currently, under the Exchange's rules, specialists are not required to accept professional orders for the book unless such orders better the existing market.[4] A specialist also is not required to provide primary market protection to professional orders pursuant to the Exchange's Best Rule[5] as it does for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated July 26, 1995. In Amendment No. 1, the Exchange notified the Commission that the proposed rule change was approved by the Exchange's Executive Committee on July 20, 1995.

[4] See CHX Article XXX, Rule 2. A professional order is any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Interpretation .04 of CHX Article XXX, Rule 2.

[5] See Article XX, Rule 37(a). Under the Exchange's Best Rule, Exchange specialists are required to guarantee executions of market and limit orders under certain circumstances. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if the bid or offer at the limit price has been exhausted in the primary market, there has been price penetration of the limit in the primary market (a trade through of a CHX limit order), or the issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

agency orders.[6] Moreover, a specialist may retain priority over a professional order provided it is displaying its interest, including the size, over the quotation system (''Specialist Priority Rule''). Specialists, however, are always required to give precedence (*i.e.,* yield) to agency orders.[7] On the other hand, under the current CHX rules, agency orders do not have priority over professional orders, and professional orders that have established time priority are not required to give precedence to agency orders.[8]

The Exchange believes that the interplay among the Specialist Priority Rule, the Best Rule, and the Exchange's other rules of priority and precedence [9] often results in the unintended anomaly of providing the professional order the benefit of the Best Rule and/or the specialist being unable to retain priority over professional orders as provided in the Specialist Priority Rule. For example, assume a specialist accepts a professional order for his book and thereafter an agency order is entered on the book at the same price. If the agency order is due a fill under the Best Rule because of prints in the primary market, the professional order must also be filled because it has higher (*i.e.,* time) priority in the book. Moreover, assume a specialist bid is entered first in time and thereafter a professional order and an agency order at the same price are entered respectively. Under the current rules, even if the specialist's bid may retain priority over the professional order and only has to yield to the public agency order at the same price, in this situation the specialist bid must yield to both orders because the professional order has time priority over the public agency order.

The Exchange states that due to this anomaly, specialist are hesitant to accept professional orders. The Exchange proposes to add interpretation and policy .05 to Rule 2 of Article XXX of the Exchange's Rules to give specialists an incentive to accept professional orders for inclusion in the book.

Currently, as well as under the proposed rule change, when a professional order ''has the post,'' (*i.e.,* is the highest priority order in the specialist's book at a given price), the professional order would not be required to yield precedence to an agency order at the same price that has not established time priority over the professional order. Under the proposal, however, in the event that the agency order is due a fill under the Exchange's Best Rule, the agency order would be filled even though the professional order, which has a higher priority on the book, is not filled. Therefore, although an incoming MAX order will be filled against the professional order and not against subsequently entered agency orders that have not established time priority, if the subsequently entered agency orders are due a fill under the Best Rule, the agency orders would be executed without filling the professional order, which only has post protection.

Moreover, under the proposed rule change if a specialist's own order has the post (*i.e.,* an order that originates with the specialist as dealer is the highest priority order in the specialist's book at a given price) and a professional order and an agency order are subsequently entered in the book at the same price, the professional order must yield precedence to the agency order if the specialist's own order yields precedence to the agency order. Therefore, the specialist bid second, and the professional order third. This proposed interpretation and policy is intended to allow the agency order to displace the specialist's order while at the same time allow the specialist's order to retain priority over the professional order in accordance with the Specialist Priority Rule.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act because it may contribute to the depth and liquidity of the CHX market if, as the CHX suggests, more order flow is attracted to the Exchange. The Commission notes that the Exchange has represented that the proposed rule change does not affect the primary market protection afforded to agency orders under the Exchange's Best Rule, affect the standing of agency orders in relation to a dealer's orders for its own account, or modify the conditions under which a specialist's bid may retain priority over a professional order. In addition, the Exchange has represented to the Commission that the proposed rule change will not affect the application of the Exchange's current quote dissemination policy, which requires all customer limit orders, regardless of priority, to be displayed in the CHX specialist's quote when the customer order improves the specialist's quote or the national best bid or offer. The Commission, therefore, believes that the rule change will not disadvantage public agency orders.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act.[11] that the proposed rule change (SR–CHX–95–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

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[6] Professional market orders with a ''Z'' designator receive automatic executions based on the CHX's Best Rule. The Z designator may be used by an order sending firm after it negotiates with the specialist and the specialist agrees to accept the firm's professional orders for automatic execution on the CHX's automated order routing and execution system (''MAX''). Limit orders sent with the ''Z'' designator will be represented on the specialist's book as professional orders and do not receive the benefits of the Best Rule. Securities Exchange Act Release No. 35505 (Mar. 17, 1995), 60 FR 15613 (Mar. 24, 1995) (File No. SR–CHX–95–09).

[7] See CHX Artile XXX, Rule 2.

[8] With regard to the display of limit orders, however, the Exchange has represented to the Commission that all bids and offers that improve the current CHX quote are displayed in the revised CHX quotation. Telephone conversation between George Simmon, Craig Long, and David Rusoff, Foley & Lardner, and Holly Smith, Ivette Lopez, Glen Barrentine, and Jennifer Choi, Division of Market Regulation, SEC, on December 19, 1995. See also CHX Rule 7, Article XX. Therefore, assuming that the primary market quote in XYZ is 20¼–20½, if a professional order to buy 1,000 shares of XYZ at 20¼ was entered at 9 a.m. and a public agency order to buy 1,000 of XYZ at 20¼ was entered at 9:05 a.m., the CHX specialist quotation would show at least 2,000 shares of XYZ at 20¼.

[9] See CHX Article XX, Rules 15 (Precedence of Bids); 16 (Precedence of Bids at Same Price); 17 (Precedence of Offers); 18 (Precedence of Offers at Same Price); 19 (Precedence of Offers to Buy ''Seller's Option''); and 20 (Claim of Prior or Better Bid).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–36731; File No. SR–NYSE–95–41]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Vendor Service Administrative Fee

January 17, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on December 19, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective October 1, 1995,[2] the NYSE proposes to retroactively decrease the Vendor Service Administrative Fee and change how this fee is calculated. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Administrative Fee

(Annual Fee)

Vendor Service Administrative Fee

[Pass Through plus $900 per Terminal]
Pass Through plus $480 per ITPN user*
*Pass Through plus $480 per Terminal for non-ITPN distributed product***

*An ''ITPN'' is a member or person associated with a member, who has been entitled to receive one or more third party market data vendor service offerings via the Exchange's Integrated Technology Program Network.

**It should be noted that the Exchange is in the process of migrating all services to the ITPN distribution method. Therefore, the terminal vs user distinction is only temporary, pending completion of the migration.

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 Exchange provides administrative support for members and member organizations who wish to receive third party market data vendor services on the Trading Floor. This administrative support includes arranging for subscriptions, installations, repairs, and training as well as billing validation and payment. A fee is charged to members and member organizations for such administrative services. The purpose of the proposed rule change is to reduce this administrative fee and change how it is calculated.

The Vendor Service Administrative Fee is composed of third party market data vendor pass through fees and the Exchange's fee for administrative services rendered. The Exchange, on behalf of its members, recently negotiated a reduction in the pass through fees charged to members by third party market data vendors. To complement this reduction, the Exchange is reducing its portion of the Vendor Service Administrative Fee from $900 per third party market data terminal to, depending on the circumstances, $480 per terminal for those users who receive third party market data services by means of their own terminals or terminals leased from third party market data vendors.

The Exchange also proposes to alter the methodology for calculating the NYSE's administrative fee for those users receiving third party market data vendor services via the Exchange's ITPN.[3] Instead of basing the fee on the number of third party market data terminals owned or leased by a member, the proposal assesses the fee for ITPN distributed services based on the number of ITPN usernames associated with a member that are entitled to access third party market data vendor services through any of the terminals on the Floor of the Exchange.[4]

The Exchange notes that it is in the process of migrating all of the third party market data vendor services received by members and member organizations on the Floor of the Exchange to the ITPN distribution method.[5] After the migration is completed, the Exchange component of the Vendor Service Administrative Fee will be based solely on the number of ITPN usernames associated with a member that are entitled to concurrent access to third party market data vendor services.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers to objectives of section 6(b)(4)[7] in particular in that is provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organizations's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (e) of Rule 19b–4 thereunder.[9]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such actions 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

[1] 15 U.S.C. 78s(b)(1).

[2] Although the effective date of the Vendor Service Administrative Fee for billing purposes is October 1, 1995, the Commission notes that this fee will not be invoiced until the end of January 1996.

[3] ITPN stands for ''Integrated Technology Program Network.''

[4] In addition to third party market data vendor services, the ITPN offers users a number of additional services. The Exchange will not assess an administrative fee on a username that allows access to these additional services unless the username also allows access to third party market data vendor services. Telephone conversation between Santo A. Famularo, NYSE, and Anthony P. Pecora, Attorney, SEC (Jan. 11, 1996).

[5] The Exchange anticipates that all third party market data vendor terminals will be removed from the Floor by June 1996. Telephone conversation between Santo A. Famularo, NYSE, and Anthony P. Pecora, Attorney, SEC (Dec. 21, 1995).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–41 and should be submitted by February 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 96–10333 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36728; File No. SR-Phlx-95-60]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Alternate Specialists

January 17, 1996.

I. Introduction

On September 15, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rule 202A, which addresses the responsibilities of Alternate Specialists. On November 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36457 (Nov. 3, 1995), 60 FR 57028 (Nov. 13, 1995). No comments were received on the proposal. On December 27, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of Proposal

An Alternate Specialist is a registered Phlx specialist, who with regard to certain assigned issues has agreed generally to supplement the market making activities of Exchange primary specialists. When called in to participate by the specialist or a Floor Official, Alternate Specialists assist the primary specialists in executing public orders during periods of unusual or heavy trading in a particular issue.[5] Phlx Rule 202A sets forth the requirements and responsibilities of Alternate Specialists. Currently, equity specialists are permitted to trade in an Alternate Specialist capacity all securities traded on the equity floor.

Phlx rule 202A imposes certain trading obligations upon Alternate Specialists pursuant to section 11 of the Act and the rule thereunder[6] as well as financial responsibility and reporting requirements. An Alternate Specialist is obligated under Rule 202A to effect all of his transactions in securities on the Exchange so that they constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Moreover, an Alternate Specialist at the request of a floor broker must make a bid or offer in any security to which he is assigned or in which he is then trading such that a transaction effected thereon will contribute to the maintenance of a fair and orderly market.

The current rule also provides the criteria for qualifying and maintaining the status of an Alternate Specialist. Under the rule, 50% of an alternate Specialist's quarterly share volume (excluding share volume in securities in which he is registered as specialist) must be in issues to which he is assigned. Moreover, 50% of the quarterly share volume that creates or increases a position (''opening'') in an Alternate Specialist account must result from transactions consummated on the Exchange.

Finally, the current rule contains several provisions that focus on the Alternate Specialist's participation on openings and after the opening and the handling of orders. Supplementary Material .06 to Phlx Rule 202A provides that alternate Specialists as a group are entitled to participate in opening a security on the Exchange with equal standing with respect to any net imbalance (after specialist participation) of purchase and sale orders on the exchange. Moreover, pursuant to Supplementary Material .07 to Phlx Rule 202A, following the opening, when the bids or offers of one or more Alternate Specialists are equal in price to those of the specialist, the Alternate Specialists as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders). Pursuant to Supplementary Material .09 to Rule 202A, an Alternate Specialist must also accept and guarantee execution of all 100 share agency orders to which his assignment extends that

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October 30, 1995. In Amendment No. 1, the Exchange clarified that the ''50% of quarterly opening share volume'' requirement has been replaced with ''50% of quarterly trade volume.''

[4] See letter from Gerald O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 20, 1995. In Amendment No. 2, the Exchange clarified that the Alternate Specialist must clear the post before sending an order via ITS to obtain credit for the 50% on-floor requirement. Amendment No. 2 also withdrew the proposal to permit Alternate Specialists to count towards the 50% on-floor requirement unexecuted orders of 500 or more shares placed with the specialist on the Exchange at a price on or in-between the consolidated market and maintained on the book for an extended period of time.

[5] Phlx specialists and Alternate Specialists qualify for favorable margin treatment under Regulation T. Under Rule 12 of Regulation T, a creditor may extend good faith margin for any long or short position in a security in which a specialist makes a market. See 12 CFR 220.12(b)(3). Regulation T defines ''good faith margin'' as the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. See 12 CFR 220.2(k).

[6] 15 U.S.C. 78k. Generally, section 11(b) of the Act governs specialist rights and obligations. In particular, Rule 11b–1(a)(2) under the Act provides that the rules of an exchange concerning specialist registration must include provisions on the following: (1) Minimum capital requirements; (2) requirements that the specialist engage in a course of dealing for his own account that will assist in the maintenance of a fair and orderly market and that substantial, continued failure to meet these requirements will result in suspension or cancellation of the specialist's registration in his specialty stock(s); (3) provisions restricting the specialist's dealings to those necessary to maintain a fair and orderly market or to act as an odd-lot dealer; (4) provisions stating the responsibilities of the specialist as broker; and (5) procedures for the effective and systematic surveillance of specialist activities. Phlx Alternate Specialists are considered specialists as envisioned by Section 11 of the Act.

are not accepted by the specialist when requested by a floor broker.

The Exchange proposes to amend certain obligations and responsibilities of Alternate Specialists set forth in Phlx Rule 202A. Specifically, the Exchange proposes to consolidate into new Rule 202A(a) the provisions relating to an Alternate Specialist's affirmative and negative market making obligations. The Exchange believes that this change will avoid repetition and improve the clarity of the rule.

In new Rule 202A(b), Phlx proposes to limit the number of equity issues in which an individual may serve as Alternate Specialist to 60 securities. Moreover, the Exchange proposes that once a member has been assigned as an Alternate Specialist, the member must maintain such assignment for at least 30 business days, after which the member may terminate the assignment by providing written notification to the Phlx on a form prescribed by the Exchange.[7] The Exchange states that the primary purpose of the proposed rule change is to bolster liquidity provided by the Phlx's Alternate Specialist program by concentrating Alternate Specialist activities in a smaller number of securities.

Finally, the Exchange proposes new Rule 202A(c), which will list the criteria for qualifying and maintaining the status of an Alternate Specialist. This provision incorporates and amends certain previous requirements and eliminates others that the Exchange finds to be unnecessary in light of other Exchange rules. In particular, the Exchange proposes to delete the requirement that 50% of the Alternate Specialist's share volume must be in assigned issues. The Exchange believes that this requirement is no longer necessary in light of its proposal to limit the maximum number of securities in which a specialist can act as an Alternate Specialist to 60. Moreover, the Exchange proposes to amend the requirement that 50% of the quarterly opening share volume in an Alternate Specialist account result from transactions consummated on the Exchange (''50% on-floor requirement'') by replacing the ''50% of quarterly opening share volume'' with ''50% of quarterly trade volume.'' The Exchange states that it has determined that the requirement should no longer be limited to ''opening'' positions because measuring all trade volume each quarter to ensure that 50% is executed on the Exchange should fulfill the Phlx's intent to monitor for true Alternate Specialist activity and obligations. The Exchange also notes that opening transactions are difficult to monitor because floor tickets are not marked with an opening or closing distinction on the equity floor.

The Exchange also proposes to amend the 50% on-floor requirement to permit Alternate Specialist to include in the calculation trades effected on another national securities exchange through the Intermarket Trading System (''ITS'') that do not exceed a ratio of three Phlx trades to one ITS trade.[8] For an ITS trade to count toward such a requirement, however, the Alternate Specialist must first ''clear the post'' before routing an ITS commitment to another market.[9] The Exchange believes that it is appropriate to allow one-quarter of the 50% on-floor requirement to be met by ITS trades effected away from the Exchange because ITS enhances liquidity and provides a linkage that is vital to a true National Market System.

The Phlx also proposes to delete Supplementary Material .06, .07, and .09. The Exchange proposes to delete Supplementary Material .06 and .07, which pertain to Alternate Specialist's participation, because it believes that the priority of orders is already adequately addressed in Rules 119 and 120.[10] The Phlx also proposes to delete Supplementary Material .09, which relates to Alternate Specialist's handling of orders, because it believes that the obligation on the Alternate Specialist to accept and guarantee executions only pertains to 100 share orders and will be largely superseded by new Rule 202A(c)(iv), where the Alternate Specialist's affirmative obligation to maintain an adequate presence in his assigned issues is more pronounced.

[7] Terminations will become effective as of the opening of trading on the equity floor on the business day following the submission.

[8] For example, if an Alternate Specialist needs to employ ITS trades to meet his on-floor requirement, and has executed a total of 2,000 trades in that quarter, the requirement could be met by effecting 250 off-floor ITS trades and 750 on-floor trades.

[9] Specifically, before sending an order initiated on the Exchange floor to another market, the Alternate Specialist must (1) request the specialist's quote and (2) make a bid or offer at the post for the price and size of his intended interest. See Securities Exchange Act Release No. 20331 (Oct. 27, 1983), 48 FR 50649 (Nov. 2, 1983) (approving a proposed rule change to require all Phlx floor members to clear the post for a security on the Phlx floor before directly inputting the order into the Intermarket Trading System; alternate specialists are also required to bid or offer at the post for the price and size of their intended interest prior to transmitting a commitment to another market via the ITS).

[10] See Phlx Rule 119 (Precedence of Highest Bid) and Phlx Rule 120 (Precedence of Offers at Same Price).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11(b).[11] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of section 11(b) and Rule 11b–1 thereunder [12] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission believes that limiting the number of issues in which an equity specialist may serve as an Alternate Specialist to 60 would assist in adding depth and liquidity to the market. By placing a limit on the number of Alternate Specialist issues, the Alternate Specialist can more effectively utilize his capital and focus his liquidity providing activities on 60 issues rather than on potentially over 2,300 issues.

The Commission also believes that the consolidation into new Rule 202A(a) of the Alternate Specialist's affirmative and negative market making obligations is consistent with the purposes of the Act in that the requirements of section 11(b) of the Act and Rule 11b–1(a)(2) thereunder remain intact: Alternate Specialists must continue to adhere to minimum capital requirements as well as the requirement that the Alternate Specialist trading contribute to the maintenance of a fair and orderly market. Moreover, the proposed rule change does not affect the Alternate Specialist's obligations as an equity specialist when he is not otherwise acting in his capacity as an Alternate Specialist. Finally, Phlx's specialist compliance and surveillance rules continue to apply to the Exchange's Alternate Specialist program. Therefore, the Commission believes that these rules will ensure that Alternate Specialist trading will be beneficial to investors and the market in general.

The Commission also believes that the amendments to the two quarterly trading requirements are not inconsistent with the Act. The requirement that 50% of the Alternate

[11] 15 u.S.C. 78f(b) and 78k(b).

[12] 17 CFR 240.11b–1.

Specialist's share volume be in assigned issues may be deleted because with only 60 securities in which a specialist may serve as an Alternate Specialist and the adoption of the new standards in the rule, it is permissible for Phlx to decide that an aggregate minimum level of Alternate Specialist activity is no longer necessary to ensure that Alternate Specialists are acting as section 11(b) specialists. Moreover, the 50% requirement spread over potentially 2,300 securities did not guarantee significant depth or liquidity in individual stocks. The Commission believes that new Rule 202A(c)(iv), which places affirmative obligations on the Alternate Specialist to maintain an adequate presence in the Exchange's market with respect to assigned issues and to execute at least 50% of the trades placed in the Alternate Specialist account each quarter on the Exchange, in addition to the limitation in the number of securities for which a specialist may act as an Alternate Specialist should ensure sufficient Alternate Specialist participation on the Exchange and liquidity in individual stocks.

With respect to the 50% on-floor requirement, the Exchange proposes to calculate the percentage of quarterly trade volume rather than ''opening'' share volume. The Commission believes that with this amendment the Exchange can monitor the frequency of Alternate Specialist participation on the Exchange, which would be as helpful as the prior requirement in measuring whether Alternate Specialists are fulfilling their obligations to provide liquidity on the Exchange. Moreover, eliminating the ''opening'' distinction will make it easier for the Exchange to monitor compliance with the requirement.

Moreover, the Commission believes that amending the 50% on-floor requirement to permit Alternate Specialist to include in the calculation ITS trades will not be inconsistent with the purposes of the Act. The Exchange specifically requires that the Alternate Specialist clear the post before routing an ITS commitment to another market. Where one of the primary obligations of Alternate Specialists is to provide liquidity on demand, permitting Alternate Specialists to count ITS trades towards their 50% on-floor requirement would encourage and recognize Alternate Specialists activities that contribute to the liquidity of the National Markets. Moreover, the Commission recognizes that an Alternate Specialist who initiates an order on the floor and clears the post should not be penalized if there is no interest in the crowd or on the limit order book against which the Alternate Specialist's order can be executed and if the specialist does not accept that order for placement in the book. The Commission finds that it is reasonable for the Exchange to assume that an Alternate Specialist who makes a good faith effort to participate as dealer on the Exchange floor is engaged in bona fide specialist activity even though the transaction ultimately can be consummated only by exposing the Alternate Specialist's order to all interest in the National Market System. Moreover, the Commission finds that the limit on the amount of ITS trades that may be counted towards the 50% on-floor requirement should ensure that the Alternate Specialists are actually engaging in bona fide equity specialist activity on the Phlx floor entitled to exempt credit.

Finally, the Commission finds that the Exchange's rules of priority and precedence of orders adequately address the concerns in Supplementary Material .06 and .07. Moreover, the Commission believes that the Exchange's proposal to delete Supplementary Material .09 is not inconsistent with the purposes of the Act. Although the affirmative obligations upon Alternate Specialist in the proposed rule change do not require the Alternate Specialist to guarantee execution of any specific number of shares, Phlx rules require Alternate Specialists to maintain an adequate presence on the Exchange with respect to assigned alternate issues and related trade activities for the alternate account. This standard will ensure that, when needed, the Alternate Specialist will be available to assist in executions as required of all specialists under section 11(b) of the Act.[13]

Moreover, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 2 merely clarified a requirement on the Alternate Specialist to clear the post before routing an order to another market through ITS[14] and withdrew from consideration of the proposed rule change an amendment to permit Alternate Specialists to count towards the 50% on-floor requirement unexecuted orders of 500 or more shares placed with the Specialist on the Exchange. Both these changes to the proposal strengthen the Phlx's Alternate Specialist rules. In addition, the Exchange's original proposal was published in the Federal Register for the full statutory period and no comments were received.[15] Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment No. 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. 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 statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–60 and should be submitted by February 14, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–95–60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1034 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[13] Indeed, the Commission would question whether regular or alternate specialists were fulfilling their Section 11(b) obligations if they refused to accept for execution certain orders (*e.g.*, 100 share agency orders).

[14] See *supra* note 9.

[15] See Securities Exchange Act Release No. 36457 (Nov. 3, 1995), 60 FR 57028 (Nov. 13, 1995).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–36729; International Series Release No. 918; File No. SR–Phlx–95–80]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Strike Price Intervals for Australian Dollar Options

January 17, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its strike price policy, pursuant to Phlx Rule 1012, Series of Options Open for Trading, respecting foreign currency options on the Australian dollar by changing from a $.01 interval to a $.005 interval in the nearest three expiration months. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's strike price interval policies are administered pursuant to Rule 1012, Series of Options Open for Trading. Currently, Australian dollar options are listed at one cent intervals.[3] Pursuant to Phlx Rule 1012, six expiration months are currently listed in regular foreign currency options, with one, two, three, six, nine, and twelve months until expiration.

The Exchange proposes to revise its strike price policy respecting foreign currency options on the Australian dollar by changing from a $.01 interval to a $.005 interval in the nearest three expiration months. The mid-term expiration months (listed with six, nine and twelve months until expiration) will continue to be listed at one cent intervals.

The Phlx believes that lower volatility respecting the Australian dollar (in relation to the U.S. dollar) has created a customer need for narrower strike price intervals. Lower volatility signifies less movement in the currency such that it currently trades in a more narrow range, perhaps without moving to the next (one cent) strike price interval. Strike price intervals for a non-volatile foreign currency options, including the Australian dollar, have previously been decreased.[4] The Exchange believes that the proposed reduction in the strike price internal should provide investors and traders of Australian dollar options with new trading strategies in between existing strikes, which, should, in turn, promote liquidity in Australian dollar options.

The Exchange is aware that the Commission seeks to balance an exchange's desire to accommodate market participation by offering a wide array of investment opportunities and the need to avoid the proliferation of illiquid options series. In this regard, the Exchange notes that this proposed rule change is limited to a foreign currency options with low volatility. Accordingly, the Exchange believes that narrower strike prices are necessary to serve the needs of the marketplace. The Exchange further represents that it will eliminate excessive strike prices where appropriate.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade by enabling more effective management of foreign currency risk respecting the Australian dollar.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–Phlx–95–80 and should be submitted by February 14, 1996.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (SR–Phlx–86–38).

[4] See *e.g.*, Securities Exchange Act Release Nos. 35361 (April 20, 1995) 60 FR 20544 (April 26, 1995) (British Pound from $.025 to $.01 strike price intervals) (File No. SR–Phlx–95–06), 25685 (May 10, 1988), 53 FR 17534 (May 17, 1988) (French franc from $.05 to $.025 strike price intervals) (File No. SR–Phlx–86–14), and 24103 (February 13, 1987), 52 FR 5605 (February 25, 1987) (British Pound from $.05 to $.025 strike price intervals) (File No. SR–Phlx–86–14).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1035 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21681; 811–8940]

First Colonial Ventures, Ltd.; Notice of Proposed Deregistration

January 17, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Proposed Deregistration under the Investment Company Act of 1940 (the ''Act'').

RELEVANT ACT SECTIONS: Sections 8(f) and 54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that First Colonial Ventures, Ltd. (''First Colonial'') ceased to be an investment company when it elected on June 29, 1995 to be regulated as a business development company (''BDC'') pursuant to section 54(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on February 12, 1996. 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.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. First Colonial is a registered, closed-end, diversified, management investment company. On January 13, 1995, First Colonial filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act. In 1985, First Colonial first registered securities under the Securities Act of 1933.

2. First Colonial is organized as a corporation under the laws of the state of Utah and has its principal place of business in the state of California.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48) (A) and (B) may elect to be subject to the provisions of sections 55 through 65 of the Act and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) Has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the ''Exchange Act''); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities.

4. On June 29, 1995, First Colonial elected BDC status by filing a Form N–54A.

5. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

6. Section 8 of the Act, requiring registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election.[1]

7. The SEC finds that First Colonial ceased to be a registered investment company on June 29, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1036 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—21682; No. 812–9756]

Protective Life Insurance Company, et al.

January 17, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Protective Life Insurance Company (the ''Company''), Protective Variable Life Separate Account (the ''Account''), and Investment Distributors, Inc. (the ''Underwriter'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) of the 1940 Act seeking exemptions from the provision of section 27(c)(2) thereof and from Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them and any other separate account established in the future by the Company (the ''Future Accounts,'' collectively, with the Account, the ''Accounts'') to support certain flexible premium variable life insurance policies offered currently or in the future by the Company (collectively, the ''Contracts'') to deduct from premiums received under the Contracts a charge in an amount that is reasonable in relation to the Company's increased federal income tax burden related to the receipt of such premium payments and that results from the application of section 848 of the Internal Revenue Code of 1986, as amended (the ''Code'').

FILING DATE: The application was filed on September 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 12, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Lizabeth R. Nichols, Esq., Protective Life Insurance Company, 2801 Highway 280 South, Birmingham, Alabama 35223.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Branch of the Commission.

Applicants' Representations

1. The Company, a stock life insurance company organized pursuant to the laws of the State of Alabama in 1907, and redomesticated under the laws of the State of Tennessee in 1992,

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] Investment Company Act Release No. 11703 (Mar. 26, 1981).

is admitted to do business in forty-nine states and the District of Columbia.

2. The Company is a wholly-owned subsidiary of Protective Life Corporation (''PLC''), an insurance holding company organized under the laws of the State of Delaware, the stock of which is traded on the New York Stock Exchange.

3. The Company established the Account as a separate investment account under Tennessee law on February 22, 1995, to support variable life insurance contracts. The Account is registered with the Commission as a unit investment trust and is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act. The Company anticipates that any Future Account would be registered under the 1940 Act as a unit investment trust and would meet the definition of a separate account in Rule 0–1(e) thereunder.

4. The Account currently has seven subaccounts, each of which invests in a corresponding portfolio of Protective Investment Company, a series type mutual fund registered with the Commission as an open-end management investment company.

5. The Underwriter, a wholly-owned subsidiary of PLC, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting section 848 thereof. Section 848 changed the federal income taxation of life insurance companies by requiring them to capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

7. The amount of expenses that must be capitalized and amortized under section 848 is generally determined with reference to premium payments for certain categories of life insurance and other contracts (''Specified Contracts''). Thus, for each Specified Contract, an amount of expenses must be capitalized and amortized equal to a percentage of the current year's net premium payments(*i.e.*, gross premium payments minus return premium payments and reinsurance premium payments) for that contract. The percentage varies, depending on the type of Specified Contract in question, according to a schedule set forth in section 848(c)(1).

8. Although framed in terms of requiring a portion of a life insurance company's general expenses to be capitalized and amortized, section 848 in effect accelerates the realization of income from Specified Contracts for federal income tax purposes, and therefore, the payment of taxes on the income generated by those contracts. When the time value of money is taken into account, this has the economic consequence of increasing the tax burden borne by the Company that is attributable to such contracts. Because the amount of general deductions that must be capitalized and amortized is measured by premium payments paid for Specified Contracts, an increased tax burden results from the receipt of those premium payments.

9. The Contracts to which Applicants wish to apply the tax burden charge are among the Specified Contracts. They fall into the category of life insurance contracts fro which the percentage of net premium payments that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized with respect to such contracts is 7.7 percent.

10. The increased tax burden resulting from the applicability of section 848 to every $10,000 of net premium payments received may be quantified as follows. In the year when the premium payments are received, the Company's general deductions are reduced by $731.50—*i.e.*, an amount equal to (a) 7.7 percent of $10,000, or $770, minus (b) one-half year's portion of the ten-year amortization, or $38.50. Using a 35 percent corporate tax rate, this results in an increase in tax for the current year of $256.03. This reduction will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth year).

11. In the Company's business judgment, a discount rate of at least 10 percent is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above. For business relating to participating insurance policies, the Company seeks an after tax rate of return on the investment of its surplus of at least 10 percent. To the extent that surplus must be used by the Company to satisfy its increased federal tax burden under section 848 resulting from the receipt of premium payments, such surplus is not available to the Company for investment. Thus, the cost to the Company ''capital'' used to satisfy its increased federal tax burden under section 848 is, in essence, the Company's after tax rate of return on surplus, and accordingly, the rate of return on surplus is appropriate for use in this present value calculation.[1]

12. Again using a corporate tax rate of 35 percent and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years, which (as noted above) partially offsets the increased tax burden, comes to $160.40. The effect of section 848 on the Company in connection with the existing Contracts is therefore an increased tax burden with a present value of $95.63 for each $10,000 of net premium payments received, (*i.e.*, $256.03 minus $160.40).

13. State premium taxes are deductible in computing federal income taxes. Thus, the Company does not incur incremental income tax are *not* tax-deductible in computing the Company's federal income taxes. Therefore, to offset fully the impact of section 848, the Company must impost an additional charge that would make it whole not only for the $95.63 additional tax burden attributable to section 848, but for the tax on the additional $95.63 itself. This additional charge can be determined by dividing $95.63 by the complement of the 35 percent federal corporate income tax rate (*i.e.*, 65 percent), resulting in an additional charge of $147.12 for each $10,000 of net premium payments, or approximately 1.47 percent of net premium payments.

14. Tax deductions are of value to the Company only to the extent that it has sufficient gross income to fully use the deductions. However, based on its prior experience, the Company believes that it can reasonably expect to use virtually all future deductions available. That is, the Company believes that it can reasonably expect to have sufficient taxable income in future years to use all deferred acquisition cost deductions.

15. The Company also represents that the 1.25 percent charge is reasonably related to the Company's increased tax burden under section 848 of the Code, taking into account the benefit to the

[1] In determining the cost of capital, the Company considered a number of factors. First, the Company identified the level of investment return that can be expected to be earned risk-free over the long-term. This rate is based upon the expected yield on 30-year Treasury bonds. Then, this rate was increased by the market risk premium that is demanded by equity investors to compensate such investors for the risks associated with equity investments. This premium is based on the average excess return earned by investing in equities as compared to that earned by investing in risk-free instruments (*ie.*, long-term Treasury bonds). Finally, the resulting rate was modified to reflect the relative volatility of an equity investment in PLC, the Company's parent. The Company represents that these factors are appropriate factors to consider in determining its cost of capital.

Company of the amortization permitted by Section 848, and the use by the Company of a 10 percent discount rate in computing the future deductions resulting from such amortization, such rate being the equivalent of the Company's cost of capital.

16. The Company believes that a charge of 1.25 percent of premium payments would reimburse it for the impact of section 848 (as currently written) on its federal tax liabilities. The Company believes, however, that it would have to increase this charge if future changes in, or interpretations of, section 848 or any successor provision result in a further increased tax burden due to the receipt of premium payments. Such an increase could result from a change in the corporate tax rate, a change in the 7.7 percent figure, or a change in the amortization period. The Contracts will or may reserve the right to increase or decrease the 1.25 percent charge in response to future changes in, or interpretations of, section 848 or any successor provision that increase or decrease the Company's tax burden. The Company understands, however, that it would need additional exemptions before increasing the charge above 1.25 percent.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in relevant part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to section 6(c) of the 1940 Act, exempting them from the provisions of section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit Applicants to deduct from premium payments received in connection with the Contracts an amount that is reasonable in relation to the Company's increased federal tax burden related to the receipt of such premium payments and that results from the application of Section 848 of the Code. The deduction would not be treated as sales load.

Relief From Provisions of Section 27(c)(2) and Rule 6e–(T)(c)(4)(v)

3. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load. Section 27(a)(1) and 27(h)(1) of the 1940 Act, in effect, limit sales loads on periodic payment plan certificates to 9 percent of total payments.

5. Paragraph (a) of Rule 6e–3(T) requires that a separate account (such as the Accounts) that issues flexible premium variable life insurance contracts, its principal underwriter and its depositor, comply with all provisions of the 1940 Act and rules thereunder applicable to a registered investment company issuing periodic payment plan certificates.

6. Paragraph (b) of Rule 6e–3(T) provides numerous limited conditional exemptions from most such provisions and rules in connection with the offer, sale and administration of flexible premium variable life insurance contracts. For example, Rule 63–3(T)(b)(13)(iii)(E) provides relief from section 27(c)(2) of the 1940 Act of the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants request the relief from section 27(c)(2) sought in this application only to preclude the possibility that a charge related to the increased burden resulting from Section 848 of the Code is not covered by the exemption provided by Rule 6e–3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying Rule 6e–3(T)(b)(13)(iii)(E) provide support for the exemption from section 27(c)(2) requested herein.

7. Paragraph (c)(4) of Rule 6e–3(T) defines ''sales load'' (for purposes of the rule) as the excess of any purchase payments over certain itemized charges and adjustments. A tax burden charge, such as the one the Company proposes to deduct, may not fall squarely into any of the itemized categories of charges or adjustments. Consequently, a literal reading of paragraph (c)(4) arguably does not exclude such a charge from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load or otherwise subject to the sales load limits of Rule 6e–3(T). Applicants assert that nothing in the administrative history of the Rule (or in the administrative history of Rule 6e–2, its predecessor) suggest that the Commission intended to treat tax charges as sales load.

8. The exemption requested by Applicants is necessary in order for them and any Future Account to rely on certain provisions of Rule 6e–3(T)(b)(13), including sub-paragraph (b)(13)(i) thereof, which provides critical exemptions from sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates only may rely, however, on sub-paragraph (b)(13)(i) if they meet its alternate limits that apply to sales load as defined in paragraph (c)(4). Applicants and Future Accounts generally could not meet these limits if the tax burden charge is included in sales load.

9. The public policy that underlies sub-paragraph (b)(13)(i), like that which underlies sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants assert that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses.

10. Applicants asset that the genesis of Rule 6e–3(T)(c)(4) supports this analysis, and suggest that section 2(a)(35) provides a scale against which the percentage limits of sections 27(a)(1) and 27(h)(1) may be measured. Applicants submit that Rule 6e–3(T)(c)(4) is simply a more specific articulation of the requirements of section 2(a)(35) as applied to flexible premium variable life insurance policies. Section 2(a)(35), like Rule 6e–3(T)(c)(4), defines sales load derivatively, treating as sales load the:

> difference between the price of a security to the public and that portion of the proceeds from its sale which is invested or held for investment . . . less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, *issue taxes, or administrative expenses of fees which are not properly chargeable to sales or promotional activities.* (Emphases added.)

Applicants maintain that the Commission's intent in adopting paragraph (c)(4) of Rule 6e–3(T) was to tailor the general terms of section 2(a)(35) to flexible premium viable life insurance policies in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in sub-paragraph (b)(13)(i). According to their analysis, paragraph (c)(4) does not depart, in principal, from section 2(A)(35).

11. Section 2(a)(35) excludes deductions from purchase payments for ''issue taxes'' from the definition of sales load under the 1940 Act. Applicants suggest that this indicates that it is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act to exclude charges for expenses attributable to federal taxes from sales load. Applicants argue that, by extension, it is equally consistent to exclude such charges, including the tax burden charge described above, from the Rule 6e–3(T)(c)(4) definition of sales load.

12. Applicants argue that the section 2(a)(35) reference to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' (quoted and emphasized above) suggest that only charges or deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed tax burden charge will be used to pay costs attributable to the Company's federal tax liabilities, which are not properly chargeable to sales or promotional activities, Applicants assert that language is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies and provisions of the 1940 Act.

13. Applicants note that the Rule 6e–3(T)(c)(4)(v) limitations of the premium tax exclusion from the definition of ''sales load'' to state premium taxes is probably a historical accident, related to the fact that, when Rule 6e–3(T) was initially adopted in 1984 and when it was amended in 1987, the additional section 848 tax burden attributable to the receipt of premiums did not exist.

14. Applicants represent that, for the reasons summarized above, deducting a charge from variable life insurance policy premium payments for an insurer's tax burdens attributable to its receipt of such payments, and excluding the charge from sales load, is 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. This is because such a charge is, Applicants represent, for a legitimate expense of the insurer and is not designed to cover sales and distribution expenses. Applicants assert that, in adopting Rule 6e–3(T), the Commission considered similar deductions for tax burdens in respect of premium taxes and permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the propriety of a charge for an insurer's tax burden attributable to premium payments received is the same whether such burden arises under state or federal law.

Request for ''Class Relief''

15. Applicants also request exemptions for any Future Account that the Company may establish to support flexible premium variable life insurance contracts as defined in Rule 6e–3(T)(c)(1). Applicants believe that the terms of any exemption sought for Future Accounts to permit the deduction of a tax burden charge would be substantially identical to those they describe in the application. Applicants assert that any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in the application. Nevertheless, the Company would have to obtain exemptions for each Future Account it establishes unless class relief is granted in response to the application.

16. The requested exemptions are appropriate in the public interest because they would promote competitiveness in the variable life insurance market by eliminating the need for the Company to file redundant exemptive application, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having repeatedly to seek the same exemptions would impair the Company's ability to effectively take advantage of business opportunities as they arise. Likewise, the requested exemptions are consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act for the same reasons. Investors would receive no benefit or additional protection if the Company were required repeatedly to seek Commission orders with respect to the same issues addressed in the application. Indeed, they might be disadvantaged as a result of the Company's increased expenses.

Applicants' Conditions

1. The Company will monitor the reasonableness of the 1.25 percent charge.

2. The registration statement for the existing Contracts and any future Contracts under which the 1.25 percent charge is deducted will include:

(a) Disclosure of the charge;

(b) Disclosure explaining the purpose of the charge; and

(c) A statement that the charge is reasonable in relation to the Company's increased tax burden as a result of Section 848 of the Code.

3. The Company also will include as an exhibit to the registration statement for the existing Contracts and any future Contracts under which the 1.25 percent charge is deducted an actuarial opinion as to:

(a) The reasonableness of the charge in relation to the Company's increased tax burden as a result of section 848 of the Code;

(b) The reasonableness of the after tax rate of return used in calculating the charge; and

(c) The appropriateness of the factors taken into account by the Company in determining the after tax rate of return.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and 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. 96–1037 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26453]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 17, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the

Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 8, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc. et al. (70–8471)

Columbia Gas System, Inc. (''Columbia''), 20 Montchanin Road, Wilmington, Delaware, 19807, a registered holding company, nineteen wholly-owned subsidiary companies of Columbia,[1] all of which are engaged in the natural gas business, and twelve subsidiary companies of TriStar Ventures Subsidiaries''),[2] have filed a post-effective amendment to the application-declaration previously filed under sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201), (''Order''), Columbia, and fourteen of the subsidiary companies (''Subsidiaries''),[3] were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool (''Money Pool'') through 1996.

By order dated March 14, 1995 (HCAR No. 26251), the TriStar Ventures Subsidiaries were authorized to invest in, but not to borrow from, the Money Pool. By order dated November 8, 1995 (HCAR No. 26404), Gas Transmission and Energy Marketing were authorized to invest in, but not to borrow from, the Money Pool.[4]

Columbia now proposes that the cost of money on all short-term advances from, and the investment rate for money invested in, the Money Pool will be the interest rate per annum (i) equal to the composite weighted average rate on short-term borrowings by Columbia deposited in the Money Pool and/or the weighted average short-term investment rate of the Money Pool, or (ii) should there be no Columbia short-term borrowings deposited in the Money Pool and no Money Pool investments, the interest rate will be the average Federal Funds rate published in the Federal Reserve Statistical Release, Publication H.15(519). A default rate equal to 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if interest or principal payment becomes past due.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1038 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Columbia Gas of Pennsylvania, Inc. (''Columbia Pennsylvania), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. (''Columbia Ohio''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. (''Columbia Maryland, Inc. ''Columbia Maryland''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. (''Columbia Kentucky''), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. (''Commonwealth Services''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. (''Columbia Gulf''), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development Corp. (''Columbia Development''), One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc. (''Columbia Resources''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp. (''Columbia Coal''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. (''Columbia Services''), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. (''Service Corporation''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. (''Columbia Propane''), 800 Moorehead Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. (''Commonwealth Propane''), 800 Moorefield Park Drive, Richmond, Virginia 23236; Tristar Ventures Corp. (''TriStar Ventures''), 20 Montchanin Road, Wilmington, Delaware 19807; Tristar Capital Corp. (''TriStar Capital''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. (''Columbia Atlantic''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia LNG Corp. (''Columbia LNG''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corp. (''Gas Transmission''), 1700 MacCorkle Avenue, SE, Charleston, West Virginia, 25314; and Columbia Energy Marketing Corp. (''Energy Marketing), 2581 Washington Road, Pittsburgh, Pennsylvania, 15241.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

[3] Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

[4] Columbia, Columbia Maryland, and thirty other subsidiary companies of Columbia have pending before the Commission a post-effective amendment that seeks authorization for the sale of securities by Columbia Maryland to Columbia, the proceeds of which will be used to refund other securities previously sold by Columbia Maryland to Columbia and to meet the capital needs of Columbia Maryland in 1996. The Commission issued a notice of the filing of the post-effective amendment on November 17, 1995 (HCAR No. 26411).

[Investment Company Act Release No. 21688; 811–8446]

Van Kampen Merritt California Quality Municipal Trust II; Notice of Application

January 18, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Van Kampen Merritt California Quality Municipal Trust II.

RELEVANT ACT SECTION: Section 8 (f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 27, 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 February 12, 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, NW., Washington, DC. 20549. Applicant, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, 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 closed-end, diversified management investment company organized as a Massachusetts business trust. On or about March 25, 1994, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant has made no public offering of its shares.

2. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not party to any litigation or administrative proceeding.

3. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1039 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21686; 811–4805]

Van Kampen Merritt Growth Fund (A Series of Van Kampen American Capital Equity Trust); Notice of Application

January 18, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Van Kampen Merritt Growth Fund (a series of Van Kampen American Capital Equity Trust, formerly a sub-trust of Van Kampen Merritt Equity Trust).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 27, 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 February 12, 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, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, 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 an open-end, diversified management investment company organized as a sub-trust of a Massachusetts business trust. On or about April 19, 1988, applicant registered under the Act and a filed registration statement under the Securities Act of 1933. Applicant's registration statement was declared effective on October 29, 1986, but applicant has made no public offering of its shares.

2. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1040 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21687; 811–8444]

Van Kampen Merritt New York Quality Municipal Trust II; Notice of Application

January 18, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Van Kampen Merritt New York Quality Municipal Trust II.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 27, 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 February 12, 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, NW., Washington, DC 20549. Applicant, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, 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 closed-end, non-diversified management investment company organized as a Massachusetts business trust. On or about March 25, 1994, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant has made no public offering of its shares.

2. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, and does not propose to engage, in any business

activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1041 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21689; 811–8354]

Van Kampen Merritt Senior Income Opportunity Trust; Notice of Application

January 18, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act''.

APPLICANT: Van Kampen Merritt Senior Income Opportunity Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that is has ceased to be an investment company.

FILING DATE: The application was filed on December 27, 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 February 12, 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 interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, 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 closed-end, non-diversified management investment company organized as a Massachusetts business trust. On February 11, 1994, applicant registered under the Act, and on March 22, 1994, applicant filed a registration statement under the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant has made no public offering of its shares.

2. Applicant has never issued or sold shares of which it is the issuer. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1042 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–96–2]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final distribution are filed in the assigned regulatory docket and are available for examination in the Rules Docket AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 18, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 28396
Petition: Sheble Aviation
Sections of the FAR Affected: 14 CFR 61.65(c)(3)

Description of Relief Sought: To permit Sheble Aviation, Sheble's TriState Aviation, and Sheble's Riviera Aviation flight instructors and pilot examiners to use, under visual flight rules and in visual meteorological conditions, the instrument landing system (ILS) located at Blythe Airport in Blythe, California, that does not have published minimums, rather than using a published ILS standard instrument approach procedure to meet the training and testing requirements for instrument rating applicants.

Dispositions of Petitions

Docket No.: 27432.
Petitioner: Dornier Luftfarht GmbH.
Section of the FAR Affected: 14 CFR 25.562(c)(5).

Description of Relief Sought/ Disposition: To extend Exemption No. 5765, as amended, which permits exemption from the Head Injury Criterion (HIC) of § 25.562(c)(5) of the FAR, for front row passenger seats located behind bulkheads in Dornier Model 328 airplanes. *Grant, December 14, 1995, Exemption No. 5765C.*

Docket No.: 28138.

Petitioner: Uyak Air Service, Inc.

Section of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To allow appropriately trained pilots employed by Uyak Air Service, Inc., (Uyak) to remove and reinstall the passenger seats in its aircraft that are type certificated for nine or fewer passenger seats and used in operations conducted by Uyak under part 135. *Grant, December 8, 1995, Exemption No. 6248.*

Docket No.: 28338.

Petitioner: Rich International Airways, Inc.

Section of the FAR Affected: 14 CFR 121.310(m).

Description of Relief Sought/ Disposition: To permit Rich International Airways, Inc., to operate two Lockheed L–1011–385–3 aircraft (also known as L–1011–500 aircraft), serial Nos. 1183 and 1196, that have more than a 60-foot distance between emergency exits. *Denial, December 12, 1995, Exemption No. 6249.*

[FR Doc. 96–990 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925, Washington, DC 20004; telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90–12/31/90	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/12/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22185; 4/29/94
4/1/94–6/30/94	59 FR 39618; 8/3/94
7/1/94–12/31/94*	60 FR 4454; 1/23/95*
1/1/95–3/31/95	60 FR 19318; 4/17/95
4/1/95–6/30/95	60 FR 36854; 7/18/95
7/1/95–9/30/95	60 FR 53228; 10/12/95

*Due to administrative oversight, the index for the third quarter of 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not published on time. The information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders in 1994, were included in the index published on January 23, 1995.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

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(This index includes all decisions and orders issued by the Administrator in 1995.)

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95–2—Harry Allan Meronek
2/14/95—CP93SO0240

95–3—Delta Air Lines
3/28/95—CP92SO0523

95–4—Dean Hanson
3/30/95—CP93WP0396

95–5—Abraham T. Araya
4/26/95—CP94EA0207

95–6—Roger Lee Sutton
4/26/95—CP93EA0370

95–7—Empire Airlines
5/5/95—CP94NM0064

95–8—Charter Airlines, James Walker & Larry Mort
5/9/95—CP93WP0005, CP93WP0012, CP93WP0003

Civil Penalty Actions—Orders Issued by the Administrator

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Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of December 31, 1995)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from October 1, 1995, to December 31, 1995. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Atlantic World Airways, Inc.

Order No. 95–23 (10/13/95)

Notice of Appeal Construed as Brief. Atlantic's notice of appeal contains Atlantic's specific objections to the initial decision and meets the requirements for an appeal brief. Agency counsel is given 35 days in which to file a reply brief and is asked to answer a few specific questions concerning whether agency counsel received a copy of Atlantic's answer to the complaint, and if so, what was the mailing date.

In the Matter of Delta Air Lines, Inc.

Order No. 95–24 (11/7/95)

Appeal Dismissed. Delta has withdrawn its notice of appeal. Therefore, its appeal is dismissed.

In the Matter of Conquest Helicopters, Inc.

Order No. 95–25 (12/19/95)

Appeal Denied as Untimely. Conquest's appeal on the merits should have been filed within 10 days of the law judge's decision finding liability, but was not filed until about a year and half later. Conquest argues that the law changed during pendency of its appeal and that it did not have knowledge of basis for its appeal until the United States Court of Appeals for the Ninth Circuit issued its decision in the *Henderson* case, 733 F.3d 875 (9th Cir. 1993). However, the Ninth Circuit's decision in *Henderson* was based on NTSB case law. Each of the NTSB decisions that the Ninth Circuit Relied on in *Henderson* was issued well before Conquest's case even arose. Thus, Conquest lacks good cause for the untimeliness of its appeal on the merits, and its appeal should be dismissed. The law judge's assessment of a $2,500 civil penalty is affirmed.

Even on Merits, Violation Still Appropriate. Even if it were necessary to reach the merits, a finding of violation would still be appropriate because the NTSB cases on which *Henderson* was based did not correctly interpret the aerial photography exception. Any suggestion that an operator can perform an operation for which it is not certificated merely because the passenger has requested it flies in the face of reason and safety. In fact, the NTSB has itself questioned the viability of the cases at issue.

Proper Interpretation of Aerial Photography Exception. When a passenger on an aerial photography flight asks an operator without a Part 135 certificate to land at a site other than the departure point, the operator should inform the passenger that this cannot be done because the necessary certification is lacking. The operates should advise the passenger at that time that any landing other than at the departure point is impermissible.

In the Matter of Eric W. Hereth

Order No. 95–26 (12/19/95)

Preponderance of Evidence Supports ALJ's Decision. The law judge's assessment of a $3,000 civil penalty is affirmed because a preponderance of the evidence supports the law judge's finding that an airplane crash was due to the pilot's fuel mismanagement rather than to a fuel leak. Mr. Hereth used the wrong flight manual in planning the flight; the manual that he consulted contained a significantly lower fuel burn rate than that of the aircraft which he was flying. FAA inspectors found no evidence of any fuel leak or mechanical

abnormalities. Mr. Hereth failed to provide any evidence of a fuel leak. Also, Mr. Hereth's testimony that the tanks were full at the beginning of the trip was based on nothing more than an assumption. Absent from Mr. Hereth's testimony was any indication that he insured that the tanks were full by some reliable method.

In the Matter of Valley Air Services, Inc.

Order No. 95–27 (12/19/95)

No Error in Accepting Supplement. In the initial application, Valley Air's counsel failed to itemize the attorney fees as required by the EAJA, but Valley Air later filed a supplement itemizing the fees requested. The law judge did not err in accepting Valley Air's supplement. The Federal courts have held that a failure to itemize may be corrected by later supplementation if the government has not shown prejudice.

No Single Position of Agency. Although the law judge stated that a single position of the government must be identified in making the substantial justification determination, the case law does not support this. In a case like this, where four separate regulations allegedly were violated, and the elements of the regulations are not identical, it is inappropriate to identify a single position of the government. The most sensible approach is to identify separate position of the government for each alleged regulatory violation.

Agency Not Substantially Justified. The agency attorney alleged a violation of four different regulations. The record is inadequate to show that the agency was substantially justified in alleging violations of any of the four regulations.

Award Reduced. The award of fees is reduced because the law judge awarded fees stemming from the consolidation of the instant spinners case with another case involving governors in which Valley Air did not prevail. The award is also reduced because the law judge awarded Valley Air expert witness fees that were in excess of the statutory cap. Thus, the law judge's award of $16,510.21 in attorney fees is reduced to $14,998.59.

In the Matter of Atlantic World Airways, Inc.

Order No. 95–28 (12/19/95)

Showing a Good Cause Necessary to Excuse Default. A law judge does not have the authority to give a defaulting party additional time to file an answer to the complaint when the party has not provided any good reason for its lateness.

Law Judge's Default Judgment Affirmed. Atlantic World Airways made no showing of good cause for failing to file its answer by the deadline, and therefore the law judge's assessment of the $3,000 civil penalty requested in the complaint is affirmed.

No Evidence Atlantic Filed Answer Even By Extended Deadline. Even if the law judge did have the authority to extend the deadline without a showing of good cause, the result would be same. There is no evidence in the record that Atlantic filed its answer even by the extended deadline set by the law judge.

Commercial Reporting Services of the Administrator's Civil Penalty Decision and Orders

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

AvLex, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., PO Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., PO Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, PO Box 854, 433 Main Street, Gruver, TX 79040 (806) 733–2483, is placing the decisions on CD–ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on Compuserve and FedWorld.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430: (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO-7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP-7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on January 17, 1996.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 96–991 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–1]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (Arm–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C. on January 18, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25008, 25898, 25937, 26034, 26036, 26059, 26066, 26085, 26119, 26172, 26177, 26190, 26219, 26418, 26579, 26598, 26959, 26967, 26892, 26940, 26958, 26962, 26963, 26987, 26998, 27013, 27047, 27085, 27190, 27214, 27233, 27239, 27240, 27253, 27255, 27256, 27269, 27274, 27279, 27321, 27323, 27324, 27326, 27337, 27339, 27350, 27351, 27357, 27364, 27375, 27390, 27391, 27397, 38401, 27403, 27424, 27453, 27562, 27468, 27465, 27470, 27489, 27493, 27494, 27507, 27510, 27514, 27518, 27525, 27534, 27544, 27546, 27515, 27553, 27590, 27622, 27625, 27629, 27666, 27668, 27676, 27709, 27725, 27738, 27739, 27740, 27751, 27757, 27825, 27827, 27843, 27868, 27875, 27878, 27891, 27912, 27916, 27949, 27973, 27985, 27988, 28002, 28035, 28036, 28065, 28070, 28076, 28080, 28082, 28130, 28165, 28171, 28175, 28187, 28191, 28204, 28205, 28210, 28211, 28222, 28224, 28234, 28235, 28256, 28263, 38202, 28335, 28342, 28343, 28358, 28366, 28371, 28375, 28385.

Petitioner: Rood et al.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition:

To permit exemption from § 121.383(c), commonly referred to as the Age 60 Rule. All of these petitions pertain to the same issue, and, therefore, are addressed here under one summary. *Denial, December 28, 1995, Exemption Nos. 6252 through 6358.*

[FR Doc. 96–992 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–23]

Uniform Relocation Act, Certification Pilot Program in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On August 10, 1995, FHWA published a Notice with request for comments concerning The Florida Department of Transportation's (FDOT) proposal to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) on Federal-aid highway projects in two of its districts through use of a certification procedure permitted by the Uniform Act. The FDOT proposed to comply with the Uniform Act by conducting its right-of-way program in accordance with State laws determined by the FHWA, the Federal lead agency for the Uniform Act, to have the same purpose and effect as the Uniform Act. This notice is to inform the public that FHWA has accepted FDOT's certification.

DATES: The certification became effective on October 1, 1995, and will run for a period of two years.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Office of Real Estate Services, HRW–10, (202) 366–2035; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act (42 U.S.C. 4601–4655) provides relocation benefits to persons forced to move by Federal or federally-assisted programs or projects. It also establishes policies relating to the acquisition of real property for such programs or projects. The FHWA has been designated the Federal Government's lead agency for implementing the Uniform Act.

Sections 210 and 305 of the Uniform Act (42 U.S.C. 4630 and 4655) require State agencies that receive Federal financial assistance for programs or projects that will result in the acquisition of real property or the displacement of persons to provide ''assurances'' that they will comply with the Act's provisions. Section 103 of the Uniform Act (42 U.S.C. 4604) provides that, in lieu of those assurances, a State agency may comply by certifying (and receiving the FHWA's determination) that it will be operating under State laws that ''will accomplish the purpose and effect'' of the Uniform Act.

The FDOT applied for a certification pilot program that would cover Uniform Act compliance on Federal-aid highway projects for a period of two years. The FDOT proposed to limit the pilot program to its Districts 2 and 4. District 2 includes the area encompassed by the counties of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duvall, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union. District 4 includes the area encompassed by the counties of

Broward, Indian River, Martin, Palm Beach, and St. Lucie.

On August 10, 1995, FHWA solicited public comments (60 FR 40878) on the FDOT's proposed certification and on the determination sought from the FHWA concerning the purpose and effect of the State laws relied on by the FDOT. No comments were received. On September 29, 1995, FHWA determined that the laws and operating procedures relied on by FDOT have the same purpose and effect as the Uniform Act and accepted FDOT's certification, effective October 1, 1995, for a period of two years.

In its certification application the FDOT relied on the authority in sections 120.543 and 339.05 of the Florida statutes and on the existing FDOT right-of-way procedures. The two statutory provisions grant the FDOT broad authority to comply with Federal (Uniform Act) requirements. The FDOT right-of-way procedures govern the FDOT's compliance with the provisions of the Uniform Act. It is anticipated that the level of benefits and assistance provided to property owners and displaced persons will remain virtually unchanged since the FDOT will continue to operate under the same State laws and procedures that currently govern its compliance with the Uniform Act. The primary changes are expected to be the elimination of FHWA approvals or oversight of Uniform Act implementation in the two FDOT districts and the simplified administration associated with the State operating under its own procedures.

Under the certification pilot program, the FHWA, under section 103(c) of the Uniform Act, still can withhold project approvals or rescind acceptance of the FDOT's certification if the FDOT fails to comply with the certification or with the State law upon which the certification was based. The FHWA and FDOT will review the operations of the pilot program at its midpoint and following its completion.

Authority: 42 U.S.C. 4604; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 5, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–989 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the section affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 8, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the application are available for inspection in Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

Application No.	Applicant	Parties to exemption
3630–P	Mallinckrodt Baker, Inc., Phillipsburg, NJ	3630
7517–P	DXI Industries, Inc., Houston, TX	7517
7811–	Mallinckrodt Baker, Inc., Phillipsburg, NJ	7811
8230–P	Mallinckrodt Baker, Inc., Phillipsburg, NJ	8230
8308–P	Senate Transportation Systems, Inc., Franklin Park, NJ	8308
8390–P	Mallinckrodt Baker, Inc., Phillipsburg, NJ	8390
8445–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	8445
8451–P	National Aeronautics & Space Administration (NASA), Washington, DC	8451
9676–P	Mallinckrodt Baker, Inc., Phillipsburg, NJ	9676
9723–P	21st Century Environmental Management, Inc., of RI, Warwick, RI	9723
10307P	LCI, Ltd., Jacksonville Beach, FL	10307
10441–P	21st Century Environmental Management, Inc., of RI, Warwick, RI	10441
10589–P	Dow Chemical, USA, Midland, MI	10589
10589–P	K&K Consultants, Inc., St. Charles, MO	10589
10821–P	Micro-Med Industries, Inc., Jacksonville, FL	10821
10880–P	St. Lawrence Explosives Corp., Adams Center, NY	10880
10933–P	Master Wash Products, Inc., Columbia, SC	10933
10933–P	Solvent Services Company, Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services (North East), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services of Chattanooga, Columbia, SC	10933
10933–P	Laidlaw Environmental Services of South Carolina, Columbia, SC	10933
10933–P	Laidlaw Environmental Services of Illinois, Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services of (WT), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services of Bartow, Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, Ltd., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (Quebec), Ltd., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (FS), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (TS), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (TG), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (TES), Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, (Recovery), Inc., Columbia, SC	10933

Application No.	Applicant	Parties to exemption
10933–P	Laidlaw Environmental Services of California, Inc., Columbia, SC	10933
10933–P	Laidlaw Environmental Services, de Mexico, Inc., Columbia, SC	10933
10933–P	Bryson Industrial, Services, Inc., Columbia, SC	10933
10933–P	United States Pollution Control, Inc., Columbia, SC	10933
10933–P	Municipal Service Corporation, Inc., Columbia, SC	10933
10933–P	PPM of Georgia, Columbia, SC	10933
10933–P	EOG Environmental, Inc., Milwaukee, WI	10933
10933–P	Envirotech Systems, Inc., Seattle, WA	10933
10949–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	10949
11043–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	11043
11197–P	CalResources LLC, Houston, TX	11197
11197–P	Shell Chemical Company, Houston, TX	11197
11197–P	Shell Oil Products Company, Houston, TX	11197
11197–P	Shell Western E&P, Inc., Houston, TX	11197
11197–P	Shell Offshore, Inc., Houston, TX	11197
11197–P	Thiokol Corporation, Brigham City, UT	11197
11207–P	National Cooperative Refinery Association, McPherson, KS	11207
11043–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	11043
11197–P	CalResources LLC, Houston, TX	11197
11197–P	Shell Chemical Company, Houston, TX	11197
11197–P	Shell Oil Products Company, Houston, TX	11197
11197–P	Shell Western E&P, Inc., Houton, TX	11197
11197–P	Shell Offshore, Inc., Houston, TX	11197
11197–P	Thiokol Corporation, Brigham City, UT	11197
11207–P	National Cooperative Refinery Association, McPherson, KS	11207
11202–P	Central Illinois Public Service Company, Springfield, IL	11207
11207–P	Allegheny Power System, Greensburg, PA	11207
11207–P	Potomac Edison Company, Hagerstown, MD	11207
11207–P	Monongahela Power Company, Fairmont, WV	11207
11207–P	West Penn Power Company, Greensburg, PA	11207
11227–P	Western Atlas International, Houston, TX	11227
11230–P	Blastrite Services, Inc., Van Wyck, SC	11230
11230–P	Rimrock Explosives, Inc., Hayden Lake, ID	11230
11230–P	Southern Explosives Corporation, Glasgow, KY	11230
11230–P	United Explosives Company of Ohio, Findlay, OH	11230
11230–P	Explosives Energies, Inc., Greenfield, MO	11230
11230–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	11230
11230–P	Piedmont Explosives, Inc., Statesville, NC	11230
11230–P	Ed's Drilling & Blasting Company, Washington, MO	11230
11230–P	Edward N. Rau Contractor Co., Washington, MO	11230
11294–P	Frank's Vacuum Truck Service, Inc., Niagra Falls, NY	11294
11294–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	11294
11296–P	21st Century Environmental Management, Inc. of RI, Warwick, RI	11296
11454–P	Accurate Arms Company, Inc., McEwen, TN	11454
11588–P	American Clinical Laboratory Association (ACLA), Washington, DC	11588
11588–P	Medical Waste Institute, Washington, DC	11588

This notice is receipt of applications for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 18, 1995.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–953 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in July thru September 1995. The modes of transportation involved are identified by a number in the ''Nature of application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail Freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1479	DOT–E 1479	U.S. Department of Defense, Kelly AFB, TX.	49 CFR 172.101, 173.318, 178.338.	To renew and modify the operational emergency response plan requirement for drivers who transport liquid fluorine shipments. (mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3121	DOT–E 3121	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101 (Column 8(c)), 177.841.	To renew and modify exemption to eliminate the operational emergency response plan requirement for nitrogen tetroxide for highway transportation routes. (mode 1).
6530–P	DOT–E 6530	Bitec Southeast, Inc., Tampa, FL.	49 CFR 173.302(c)	To become a party to exemption 6530 (modes 1, 2).
6538–P	DOT–E 6538	The Coleman Company, Inc., Wichita, KS.	49 CFR 173.304(d)(3)(ii), 178.33.	To become a party to exemption 6538 (modes 1, 3).
6626–P	DOT–E 6626	Red Ball Oxygen Co., Shreveport, LA.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (modes 1, 2, 3, 4, 5).
6670–P	DOT–E 6670	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302.	To become a party to exemption 6670 (mode 1).
6670–P	DOT–E 6670	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.301(d), 173.302.	To become a party to exemption 6670 (mode 1).
6805–P	DOT–E 6805	Red Ball Oxygen Co., Shreveport, LA.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 6805 (mode 1).
7616–P	DOT–E 7616	Florida East Coast Railway Company, St. Augustine, FL.	49 CFR 172.203(a), 172.204(a), 172.204(d), 174.24(a), 174.25(b)(2), 174.3, part 107, appendix B, subpart B.	To become a party to exemption 7616 (mode 2).
7774–P	DOT–E 7774	Pipe Recovery Systems, Inc., Houston, TX.	49 CFR 173.228, 175.3, part 107, appendix B, subpart B, paragraph 1.	To modify exemption to provide for additional size non-DOT cylinders for shipment of bromine trifluoride. (modes 1, 2, 3, 4).
7774–P	DOT–E 7774	Arrow Electric Line, Inc. LaFayette, LA.	49 CFR 173.228, 175.3, part 107, appendix B, subpart b, Paragraph 1.	To become a party to exemption 7774 (modes 1, 2, 3, 4).
7887–P	DOT–E 7887	Luna Tech, Inc. Owens Cross roads, AL.	49 CFR 172.101, 175.3, part 107, portion of appendix B.	To become a party to exemption 7887 (modes 1, 2, 3, 4, 5).
7991–P	DOT–E 7991	Paducah & Louisville Railway, Inc. Paducah, KY.	49 CFR parts 100–177 ..	To become a party to exemption 7991 (mode 1).
8006–P	DOT–E 8006	Esquire Canada, Inc. Port Robinson, Ontario, CN.	49 CFR 172.400(a), 172.504 Table 2.	To become a party to exemption 8006 (modes 1, 2, 3, 4).
8009–P	DOT–E 8009	Motorfuelers, Inc. Clearwater, FL.	49 CFR 173.301(d)(2), 173.302(a)(3), 178.37–5.	To become a party to exemption 8009 (mode 1).
8451–P	DOT–E 8451	Reynolds Systems, Inc. Middletown, CA.	49 CFR 173.3 173.54, 173.60, 174.3, 175.3, 177.801.	To become a party to exemption 8451 (modes 1, 2, 4).
8554–P	DOT–E 8554	Gibson-IRECO, Inc. Duffield, VA.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (modes 1, 3).
8627–P	DOT–E 8627	Nalco/Exxon Energy Chemicals, L.P. Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 178.253.	To become a party to exemption 8627 (mode 1).
9184–P	DOT–E 9184	American Carbide, L.L.C Newport Beach, CA.	49 CFR 173.178	To become a party to exemption 9184 (modes 1, 2).
9184–P	DOT–E 9184	American Welding Products, L.L.C. (form. American Newport Beach, CA.	49 CFR 173.178	To become a party to exemption 9184 (modes 1, 2).
9275–P	DOT–E 9275	Elizabeth Arden Co. Roanoke, VA.	49 CFR parts 100–199 ..	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Fashion Fair Cosmetics Chicago, IL.	49 CFR parts 100–199 ..	To become a party to exemption 9275 (modes 1, 2, 3, 4, 5).
9421–P	DOT–E 9421	Taylor-Wharton Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To modify the exemption to provide for various technical changes to non DOT specification cylinders for use in transporting certain Division 2.1 and 2.2 material. terials. (modes 1, 2, 3).
9689–P	DOT–E 9689	ANGUS Chemical Company Buffalo Grove, IL.	49 CFR 172.203(a) 176.76(a)(4), Part 107, appendix B (1) and (2).	To become a party to exemption 9689 (mode 3).
9723–P	DOT–E 9723	CMAX Transportation, Inc., Oklahoma City, OK.	49 CFR 177.848	To become a party to exemption 9723 (modes 1, 2).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9769–P	DOT–E 9769	McCutcheon Enterprises, Inc., Apollo, PA.	49 CFR 173.12, 174.81, 176.83, 177.848.	To become a party to exemption 9769 (modes 1, 2, 3).
9977–P	DOT–E 9977	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 172.102, 173.63(b), Special Provision 109.	To become a party to exemption 9977 (mode 1).
10001–P	DOT–E 10001	Red Ball Oxygen Co., Shreveport, LA.	49 CFR 173.316, 173.320.	To become a party to exemption 10001 (mode 1).
10094–P	DOT–E 10094	Continental Nitrogen & Resources Corp., Rosemount, MN.	49 CFR 173.154(a)(17) ..	To become a party to exemption 10094 (mode 2).
10307–P	DOT–E 10307	SCM Chemicals, Inc., Baltimore, MD.	49 CFR 179.200–18(b)(2)(iii), 179.201–1, 179.201–7.	To become a party to exemption 10307 (mode 2).
10307–P	DOT–E 10307	SCM Chemicals, Inc., Baltimore, MD.	49 CFR 179.200–18(b)(2)(iii), 179.201.1, 179.201–7.	To become a party to exemption 10307 (mode 2).
10441–P	DOT–E 10441	Findly Chemical Disposal, Inc., Fontana, CA.	49 CFR 173.12(b)(6), 177.848(b).	To become a party to exemption 10441 (mode 1).
10441–P	DOT–E 10441	Hazpak, Inc., Fontana, CA.	49 CFR 173.12(b)(6), 177.848(b).	To become a party to exemption 10441 (mode 1).
10441–P	DOT–E 10441	Environmental Transportation Services, Inc., Oklahoma City, OK.	49 CFR 173.12(b)(6), 177.848(b).	To become a party to exemption 10441 (mode 1).
10688–P	DOT–E 10688	Rust's Flying Service, Anchorage, AK.	49 CFR 175.310(c)	To become a party to exemption 10688 (mode 4).
10688–P	DOT–E 10688	Ketchum Air Service, Inc., Anchorage, AK.	49 CFR 175.310(c)	To become a party to exemption 10688 (mode 4).
10692–P	DOT–E 10692	ProTank, Inc., Port Orange, FL.	49 CFR 178.61–11, 178.61–15, 178.61–20, 178.61–5, 178.61–8(c)(2).	To modify exemption to provide for additional model non-DOT specification welded pressure vessel for use in transporting Division 2.1 gas. (mode 1).
10709–P	DOT–E 10709	Coastal Fluid Technologies, Inc., Abbeville, LA.	49 CFR 173.119(m)	To become a party to exemption 10709 (modes 1, 3).
10709–P	DOT–E 10709	Nalco/Exxon Energy Chemicals, L.P., Sugar Land, TX.	49 CFR 173.119(m)	To become a party to exemption 10709 (modes 1, 3).
10798–P	DOT–E 10798	BioLab, Inc., Westlake, LA.	49 CFR 174.67 (i) and (j)	To become a party to exemption 10798 (mode 2).
10821–P	DOT–E 10821	Healthcare Waste Removal & Services, Inc. Pompano Beach, FL.	49 CFR 171.8, 172.101 Column (8c), 173.197.	To become a party to exemption 10821 (mode 1).
10869–P	DOT–E 10869	Norris Cylinder Co. Longview, TX.	49 CFR 173.301(b), 173.302(a)(5), 173.304(a), 173.34, 175.3, 178.37.	To modify the heat treatment schedule of non-DOT specification steel cylinders used to transport certain compressed gases. (modes 1, 2, 3, 4, 5).
10897–P	DOT–E 10897	ZestoTherm, Inc. Cincinnati, OH.	49 CFR 172.301 and 172.400.	Authorizes the transportation of a water reactive material in special packaging without being labeled or marked with the proper shipping name. (modes 1, 2, 3, 4).
10933–P	DOT–E 10933	Rollins Environmental Services Wilmington, DE.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933 (modes 1, 2, 3).
10933–P	DOT–E 10933	Rollins Environmental Services (NJ) Inc. Bridgeport, NJ.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933 (modes 1, 2, 3).
10975–P	DOT–E 10975	Boise Cascade Corporation Boise, ID.	49 CFR 174.67(i) and (j)	To become a party to exemption 10975 (mode 2).
11043–P	DOT–E 11043	Environmental Products & Services, Inc. Syracuse, NY.	49 CFR 177.848(D)	To become a party to exemption 11043 (mode 1).
11043–P	DOT–E 11043	Findly Chemical Disposal, Inc. Fontana, CA.	49 CFR 177.848(D)	To become a party to exemption 11043 (mode 1).
11055–P	DOT–E 11055	Findly Chemical Disposal, Inc. Fontana, CA.	49 CFR 173.226(C), 174.81, 176.83, 177.848, part 172, subpart E.	To become a party to exemption 11055 (modes 1, 2, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11055–P	DOT–E 11055	Rollins Environmental Services Wilmington, DE.	49 CFR 173.226(C), 174.81, 176.83, 177.848, part 172, subpart E.	To become a party to exemption 11055 (modes 1, 2, 3).
11056–P	DOT–E 11156	Explosives Technologies International Wilmington, DE.	49 CFR 173.212(b), 173.62.	To modify the exemption to increase the capacity limit to 60 lbs. in specially designed multi-wall plastic lined bags for use in transporting ammonium nitrate-fuel oil mixture, Division 1.5D. (mode 1).
11056–P	DOT–E 11156	Binns & Stevens Explosives, Inc. Oskaloosa, IA.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156 (mode 1).
11156–P	DOT–E 11156	Bennett Explosives, Inc. Manchester, IA.	49 CFR 173.212(b), 173.62.	To become a party to exemption 11156 (mode 1).
11159–P	DOT–E 11159	Hawman Container Services Holland Landing, Ontario, CN.	49 CFR 178.19, part 173, subpart D, E, F.	To become a party to exemption 11159 (modes 1, 2).
11169–P	DOT–E 11169	Corning Incorporated, Corning, NY.	49 CFR 173.227(b)	To become a party to exemption 11169 (modes 1, 3).
11197–P	DOT–E 11197	Chem Coast, Inc., La Porte, TX.	49 CFR part 172, subparts C and D except 172.312.	To become a party to exemption 11197 (mode 1).
11197–P	DOT–E 11197	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR part 172, subparts C and D except 172.312.	To become a party to exemption 11197 (mode 1).
11197–P	DOT–E 11197	Bostik, Inc., Middleton, MA.	49 CFR part 172, subparts C and D except 172.312.	To become a party to exemption 11197 (mode 1).
11197–P	DOT–E 11197	Cook Composites & Polymers Co., Kansas City, MO.	49 CFR part 172, subparts C and D except 172.312.	To become a party to exemption 11197 (mode 1)
11200–P	DOT–E 11200	Lockheed Martin Corporation, Princeton, NJ.	49 CFR 173.31(a)(4) and 179–300–15.	To become a party to exemption 11200 (modes 1, 3).
11200–P	DOT–E 11200	Space Systems Loral, Palo Alto, CA.	49 CFR 173.31(a)(4) and 179–300–15.	To become a party to exemption 11200 (modes 1, 3).
11207–P	DOT–E 11207	Florida Power and Light Company, Miami, FL.	49 CFR 172.301(c), 173.202, 173.28(b)(2), part 107, appendix, subpart B, paragraph (2).	To become a party to exemption 11207 (mode 1).
11230–P	DOT–E 11230	Dyna-Blast, Inc., Nortonville, KY.	49 CFR 173.62(c) Packing Method US004, 177.835(g)(3)(i), 177.848(f) Table.	To become a party to exemption 11230 (mode 1).
11230–P	DOT–E 11230	Austin Powder Company, Cleveland, OH.	49 CFR 173.62(c) Packing Method US004, 177.835(g)(3)(i), 177.848(f) Table.	To become a party to exemption 11230 (mode 1).
11230–P	DOT–E 11230	Pepin-Ireco, Inc., Ishpeming, MI.	49 CFR 173.62(c) Packing Method US004, 177.835(g)(3)(i), 177.848(f) Table.	To become a party to exemption 11230 (mode 1).
11230–P	DOT–E 11230	ETI Explosives Technologies International, Inc., Wilmington, DE.	49 CFR 173.62(c) Packing Method US004, 177.835(g)(309I0, 177.848(f) Table.	To become a party to exemption 11230 (mode 1).
11281–P	DOT–E 11281	Environmental Products & Services, Inc., Syracuse, NY.	49 CFR 172.101 Column 7 Special Provision B14 and T38.	To become a party to exemption 11281 (modes 1, 2, 3).
11294–P	DOT–E 11294	Findly Chemical Disposal, Inc., Fontana, CA.	49 CFR 177.848	To become a party to exemption 11294 (mode 1).
11294–P	DOT–E 11294	Heritage Transport, Inc., Indianapolis, IN.	49 CFR 177.848	To become a party to exemption 11294 (mode 1).
11328–P	DOT–E 11328	Alaska Pacific Powder Company, Anchorage, AK.	49 CFR 176.76(a)(8)	To become a party to exemption 11328 (mode 3).
11346–P	DOT–E 11346	Allegheny Wireland Services, Inc., Weston, WV.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346 (modes 1, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11346–P	DOT–E 11346	Hitwell Surveys, Inc., Parkersburg, WV.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346 (modes 1, 3).
11346–P	DOT–E 11346	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	To become a party to exemption 11346 (modes 1, 3).
11355–P	DOT–E 11355	Hurt's Transportation, Strathmore, CA.	49 CFR 173.315(a), Note 15.	To become a party to exemption 11355 (mode 1).
11405–P	DOT–E 11405	Color Pigments Manufacturers Association, Inc., Alexandria, VA.	49 CFR 172.203(a), 172.301(c), part 107, appendix B, subpart B, paragraph 1 & 2, part 173, appendix E (3)(b), (1)(a).	To become a party to exemption 11405 (modes 1, 2, 3, 4, 5).
11441–P	DOT–E 11441	Radian Corporation Research Triangle Park, NC.	49 CFR 173.306(e)(i)	To modify exemption to provide for highway and rail as additional modes of transportation. (mode 1).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10747–N	DOT–E 10747	Shell Oil Company, Houston, TX.	49 CFR 173.242(b)(1), 173.243(b).	To authorize the transportation of Class 3 liquids in a non-DOT specification cargo tank, described as 1200 gallon volumetric prover tank, mounted on a trailer. (mode 1).
10829–N	DOT–E 10829	Amoco Pipeline Company, Levelland, TX.	49 CFR 173.201, 173.202, 173.203.	To authorize the transportation of Class 3 liquids in a non-DOT specification packaging described as a trailer mounted mechanical displacement meter prover. (mode 1).
10835–N	DOT–E 10835	Shell Oil Company, Houston, TX.	49 CFR 173.242(b), 173.243(b), part 172, subpart C.	To authorize the transportation of Class 3 liquids in three non-DOT specification cargo tanks, described as 1100 gallon calibration tanks, mounted on a truck body. (mode 1).
11169–N	DOT–E 11169	Amalgament Canada, Toronto, Ontario, Canada.	49 CFR 173.227(b)	To authorize the transportation of certain liquids, classed as Division 6.1 and Class 8 which are poisonous by inhalation, packaged in a UN6PA1 composite packaging in an outer wooden box. (modes 1, 3).
11207–N	DOT–E 11207	Duke Power Company, Charlotte, NC.	49 CFR 172.301(c), 173.202, 173.28(b)(2), part 107, appendix, subpart B, paragraph (2).	To authorize the transportation of certain Class 3 liquids in packagings with a capacity not greater than 5 gallons on service vehicles. (mode 1).
11209–N	DOT–E 11209	National Propane Gas Association, Arlington, VA.	49 CFR 172.200, 172.302(c), 173.315(a), part 107, appendix B, subpart B, paragraph (2).	To authorize transportation of liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles exclusively for agricultural purposes when operated by a private carrier. (mode 1).
11241–N	DOT–E 11241	Rohm and Haas Company, Philadelphia, PA.	49 CFR 172.203(a), 173.31(c)(1), 179.13, part 107, appendix B, subpart B, paragraph (2).	To authorize the transportation of certain Class 3 materials, in DOT Class 105J tank cars with a maximum gross weight on rail greater than 263,000 pounds but not greater than 270,000 pounds. (mode 2).
11275–N	DOT–E 11275	DHE Fabrication and Machining, Vereeniging, Republic of So. Africa.	49 CFR 178.245–1(b)	To authorize the manufacture, marking and sale of three designs of non-DOT specification portable tanks, mounted in ISO frames, to be used for the transportation of certain Division 2.1 and 2.2 gases. (modes 1, 2, 3).
11289–N	DOT–E 11289	Western Industries, Inc., Milwaukee, WI.	49 CFR 172.203(a), 172.301(c), 178.65–4(c)(1), part 107, appendix B, subpart B, paragraph (1) & (2).	To authorize the manufacture, marking and sale of DOT Specification 39 cylinders which deviate from the visual inspection requirements. (modes 1, 2, 3, 4).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11361–N	DOT–E 11361	Novacor Chemicals, Inc., Indian Orchard, MA.	49 CFR 172.302(c), 174.67(a)(2), (i) and (j), part 107, appendix B, subpart B, paragraph (1).	To authorize tank cars, containing styrene monomer, inhibited, to remain standing with unloading connections attached when no produce is being transferred, provided that a minimal level of monitoring, is maintained, and authorizes the setting of the hand brake and blocking a wheel in both directions of the first and last cars of a series of coupled (mode 2).
11390–N	DOT–E 11390	D&D Air Transport, Inc., Houston, TX.	49 CFR 172.101, Column (9B), 172.204(c)(3), 173.27(b)(2) and (3), 175.30(a)(1), part 107, appendix b, subpart B.	To authorize the transportation of certain Division 1.1, 1.2, 1.3 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. (mode 4).
11403–N	DOT–E 11403	Telford Aviation Inc., Bangor, ME.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, 175.30(a)(1), part 107, appendix B, subpart B.	To authorize the transportation of detonators, non-electric, Division 1.1B explosive, which is forbidden for transportation by cargo aircraft only. (mode 4).
11406–N	DOT–E 11406	Conference of Radiation Control Program Directors, Pittsburgh, PA.	49 CFR 173.22(a)(1), 173.412, 173.415, 173.416, 173.421, 173.425, part 107, appendix B, subpart B, paragraph 1, Part 172, subparts C, D, E, F, G and H, part 173, subpart B.	To authorize shipments of waste or recycled materials, destined for landfill, incineration or other disposal, to be transported despite the unexpected detected presence of radioactive material, provided the conditions of the exemption are met. (modes 1, 2).
11425–N	DOT–E 11425	Hoechst Celanese, Charlotte, NC.	49 CFR 177.834(i)(3)	To authorize the loading and unloading of cargo tanks containing liquid elevated temperature material (dimethyl terephthalate), with an attendant present at all times, but not within 25 feet, as required in 49 CFR. (mode 1).
11440–N	DOT–E 11440	PPG Industries, Pittsburgh, PA.	49 CFR 173.227(c), part 107, appendix B, subpart B.	To authorize the transportation of trimethylacetyl chloride, class 8, in polyethylene drums or composite packagings which are not individually overpacked in accordance with §173.227(b). (modes 1, 2, 3).
11441–N	DOT–E 11441	United Technologies Carrier, Syracuse, NY.	49 CFR 173.306(e)(i)	To authorize the manufacture, marking and sale of certain refrigerating machines containing nonflammable, nonpoisonous liquefied refrigerant gas. (mode 1).
11447–N	DOT–E 11447	Saes Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To authorize the transportation of certain quantities of metal catalyst, classed as Division 4.2, in non-DOT specification packaging that exceeds the maximum net quantity allowed per package. (modes 1, 4).
11448–N	DOT–E 11448	Amalgamet Canada, Toronto, Ontario, CN.	45 CFR 173.227(c)	To authorize the transportation of certain materials poisonous by inhalation, Hazard Zone B, in stainless steel drums which are not individually overpacked in accordance with 49 CFR 173.227(b). (modes 1, 3).
11468–N	DOT–E 11468	Dept. of Energy, Richland, WA.	45 CFR 173.211	To authorize the one-time transportation of residual sodium metal contained in the piping of a test assembly, overpacked in a reinforced plywood box. (mode 1).
11473–N	DOT–E 11473	FMC Corp. Philadelphia, PA.	45 CFR 173.31(a), 179.100–1, 179.103–3, 179.103–4.	To authorize the transportation of a Division 4.2 material in DOT Specification 114A340W tank cars equipped with skid protection in place of a protective housing and equipped with a safety relief device having a start-to-discharge pressure of 82.5 percent of the tank test pressure. (mode 2).
11486–N	DOT–E 11486	U.S. Department of Defense, Falls Church, VA.	45 CFR 172.301(c), 173.192, 173.40, Part 107, appendix B, subpart B, paragraph (1).	To authorize the transportation of glass ampoules containing certain Division 2.3 materials for disposal in a non-DOT specification packaging known as a single round container. (mode 1).

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11507–N	DOT–E 11507	Siemens Power Corp., Richland, WA.	45 CFR 173.302(a)	To authorize the transportation of helium in a non-DOT specification packaging mode of zirconium. (modes 1, 4).
11514–N	DOT–E 11514	Jet Propulsion Lab, Pasadena, CA.	49 CFR 173.62	To authorize the transportation of certain rocket motors, Division 1.3C, incorporated in a spacecraft without DOT specification packaging. (mode 4).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6670–P	DOT–E 6670	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302.	To become a party to exemption 6670. (mode 1.)
EE 8273–X	DOT–E 8273	Mazda Motor of America, Inc., Irvine, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.125, 173.152.	Authorizes the shipment of a passive restraint module with an inflator containing a Class B explosive, classed a flammable solid (modes 1, 2, 3, 4.)
EE 8554–P	DOT–E 8554	Gibson-IRECO, Inc., Duffield, VA.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554. (modes 1, 3.)
EE 8692–X	DOT–E 8692	Mitsubishi International Corp., New York, NY.	49 CFR 173.154	Authorizes the shipment of sodium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2,200 pounds each. (modes 1, 2, 3.)
EE 10148–X	DOT–E 10148	Pro-Tech-Tube Inc., Kansas City, MO.	49 CFR 173.387(b)(2)(iii), 178.609(h)(1).	Authorizes the manufacture, marking and sale of a packaging that does not pass the penetration impact test in 49 CFR 173.387(b)(2)(iii) but provides an equivalent level of safety for shipment of etiologic agents. (modes 1, 2, 3, 4, 5.)
EE 10307–P	DOT–E 10307	Akzo Nobel Chemicals, Inc., Chicago, IL.	49 CFR 179.200–18(b)(2)(iii), 179.201–1, 179.201–7.	To become a party to exemption 10307. (mode 2.)
EE 10475–X	DOT–E 10475	General Cylinder Div., Monco Inc. d/b/a Midwest Ruffs Dale, PA.	49 CFR 173.34(L), subparagraphs 1, 2 and 3, 178.51–15, 178.61–15, 178.61–18, part 107, appendix B, subpart B.	Authorities the rebuilding and sale of DOT Specification 4B, 4BA and 4BW cylinders for the transportation of propane. (mode 1.)
EE 10717–P	DOT–E 10717	Akzo Nobel Chemicals, Inc., Chicago, IL.	49 CFR 173.31, 173.31 Retest Table 1.	Authorizes a modified periodic test schedule for certain DOT Specification 111A60W2 and 111A100W2 tank cars for shipment of sulfuric acid. (mode 2.)
EE 11412–X	DOT–E 11412	Starr Display Fireworks, Inc./Wizard Works Inc., Walcott, ND.	49 CFR 173.56(j)	To authorize the emergency transportation of an explosive device classed Division 1.4G. (modes 1, 2.)
EE 11481–N	DOT–E 11481	ITT Automotive Aftermarket Division, Florence, KY.	49 CFR 173.306(f)(2)(iii), 173.306(f)(3).	To authorize the emergency transportation of accumulators (Gas-pressurized shock absorbers) as ORM-material without required markings. (modes 1, 2, 3, 4, 5.)
EE 11498–N	DOT–E 11498	Burlington Northern Railroad Company, Everett, WA.	49 CFR 173.31(b), 179.100–12(b), 179.100–12(c).	To authorize the shipment of a DOT Specification 112J340W tank car, containing a division 2.1 material, meeting all DOT requirements except that the tank car has the protective housing cover removed. (mode 2.)
EE 11499–N	DOT–E 11499	Brownie Tank Mfg. Co., Minneapolis, MN.	49 CFR 172.301(c), 178.345–2(a)(1), 178.346–2(a), part 107, appendix B, subpart B, paragraph 1.	To authorize the manufacture, marking and sale of certain non-DOT specification cargo tanks comparable to Specification DOT 406 cargo tank motor vehicles. (mode 1.)
EE 11500–N	DOT–E 11500	Sherritt, Inc., Fort Saskatchewan, CN.	49 CFR 1234, 173.31(a) ..	To authorize the emergency transportation in commerce of a leaking rail car to repair facility containing residue of anhydrous ammonia. (mode 2.)
EE 11504–N	DOT–E 11504	Champagne Railroad, Inc., Cohocton, NY.	49 CFR 172.203(a), 172.302(c), 174.85(d), part 107, appendix B, subpart B.	To authorize the use of a locomotive as a buffer car for purposes of train placement provided the engine is not running, batteries are disengaged, no personnel are onboard, and the locomotive is in tow with no MU device connected. (mode 2.)
EE 11509–N	DOT–E 11509	Alliance Petroleum Corp. et al.	49 CFR 180.405(b), 180.405(g)(2), 180.405(g)(3), 180.407(c).	To authorize alternative testing date for cargo tanks used for transportation of various classes of hazardous materials. (mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11512–N	DOT–E 11512	Alaska Eskimo Whaling Commission (AEWC) Barrow, AK.	49 CFR 172.101, Column (9B), 175.30.	To authorize the emergency transportation of black powder, Division 1.1D, in greater quantities greater than those presently authorized. (mode 4.)
EE 11515–N	DOT–E 11515	R.J. Reynolds Tobacco Co., Winston-Salem, NC.	49 CFR 173.242	To authorize the emergency transportation of aluminum dross, Division 4.3 in covered dump type trailers. (mode 1.)
EE 11517–N	DOT–E 11517	Technical Service Co., Long Beach, CA.	49 CFR 173.201, 173.202, 178.253, 178.253–1(b).	To authorize the emergency transportation of non-DOT specification portable tanks manifolded together within a frame, having top and bottom openings similar to DOT Specification 57 for use in transporting Class 3 and 8 material. (mode 1.)
EE 11524–N	DOT–E 11524	AKZO Nobel Coatings Inc., Norcross, GA.	49 CFR 172.406(a)(1)(ii) ..	To authorize the emergency transportation of small packaging marked with the proper shipping name and labels on different sides for use in transporting Class 3 material. (Modes 1, 2, 3.)
EE 11525–N	DOT–E 11525	Liquid Carbonic Industries Corp., Oak Brook, IL.	49 CFR 173.304	To authorize the emergency one-time shipment of a chlorine cylinder equipped with an emergency ''A'' kit attached. (mode 1.)
EE 11534–N	DOT–E 11534	Elf Atochem North America Inc..	49 CFR 172.402(b)	To authorize the emergency transportation of containers with the display of the hazard class number in the lower corner of subsidiary labels. (modes 1, 2, 3)
EE 11535–N	DOT–E 11535	Brewer Environmental Industries Inc., Honolulu, HI.	49 CFR 173.34(e)(6)	To authorize the emergency transportation of chlorine cylinders which do not have the periodic retest marking or the marking is out-of-date, from pier to plant. (modes 1, 2).
EE 11549–N	DOT–E 11549	Transportation Technology, Southwest Harbor, ME.	49 CFR 172.203(a), 173.302(c), 178.346(d)(3), part 107, appendix B, subpart B, paragraph 1.	To authorize the emergency transportation in commerce of a non-specification cargo tank built to DOT Specification 306 for use in transporting certain hazardous materials. (mode 1).
EE 11550–N	DOT–E 11550	Sun Co., Inc., Philadelphia, PA.	49 CFR 174.67(k), 174.9(b).	To authorize the emergency transportation of a DOT Specification 111A100W1 tank car containing a residue a Class 3 material, with the heater coil inlet and outlet pipes capped. (mode 2).
EE 11552–N	DOT–E 11552	U.S. Department of Transportation/RSPA/OOE Washington, DC.	49 CFR 173.304(d)(3)(ii) ..	To authorize the emergency transportation of certain DOT Specification 2P and non-specification aerosol containers containing a butane mixture. (modes 1, 2).
EE 11562–N	DOT–E 11562	Monsanto Co., St. Louis, MO.	49 CFR 172.101 Column 7, Special Provision N43.	To authorize the emergency transportation of stabilized benzyl chloride in carbon steel drums (1A1) with phenolic lining. (mode 1).

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4600–X	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315, 178.245–3(a).	Authorizes the transport of hydrogen bromide (anhydrous) in DOT Specification 51 type portable tanks with a design pressure of 525 psig. (mode 1.)
6614–X	Auto-Chlor System, Memphis, TN.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box for transportation of certain corrosive liquids. (mode 1.)
6670–X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302 ..	Authorizes the shipment of tetrafluoromethane, in DOT Specification 3A2400, 3AA2400, 3AX2400 and 3AAX2400 cylinders. (mode 1.)
8273–X	Mazda Motor of America, Inc., Irvine, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.125, 173.152.	Authorizes the shipment of a passive restraint module with an inflator containing a Class B explosive, classed a flammable solid. (modes 1, 2, 3, 4.)
10235–X	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.119(m), 173.145, 173.276, 173.3(a), 173.304(d), 173.336, 175.3, 179.100–23, 179.101–1.	Authorizes the use of tank car tanks conforming to a DOT 105J500W specification, except that the tank and the tank head puncture resistance systems may be manufactured from certain high alloy steels for the use in transportation of a poisonous gas and certain flammable liquids. (mode 2.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10443–R	Accuracy Systems, Inc., Phoenix, AZ.	49 CFR 172.411	To authorize transportation of a Class A explosive to be shipped as a Class C explosive when packaged in specially designed non-DOT Specification containers consisting of a 20'' x 3'' x 3/16'' steel tubes placed in heat sealed poly bags overpacked in a DOT Specification fiberboard box. (Modes 1, 2, 4.)
10592–N	MG Industries, Valley Forge, PA.	49 CFR 173.301(a)(1), 173.301(h)(i)(j), 173.304(a), 173.305 (a) and (c), 173.34, 178.47.	To authorize the manufacture, marking and sell of non-DOT specification cylinders comparable to DOT specification 4DS cylinders for transportation of compressed gases. (modes 1, 2, 3.)
10875–N	Morton International, Inc., Ogden, UT.	49 CFR 173.300(a), 178.65–3	To authorize an exemption from the third party inspection requirement for DOT Specification 39 cylinders used as a component part of airbags. (modes 1, 4, 5.)
10946–N	Airco Gases of The BOC Group Inc., Murray Hill, NJ.	49 CFR 173.301(f), 173.302(a)(1).	To authorize the transportation of compressed gas, flammable, n.o.s., Division 2.1, in DOT Specification 4L cylinders with a service pressure of 212 psig or greater. (mode 1.)
11021–N	Union Pacific System, Omaha, NE.	49 CFR 173.318	Authorizes the transportation of bulk shipments of methane, refrigerated liquid, in DOT Specification 113C120W tank cars. (mode 2.)
11391–N	DHE (Fabrication & Machining), Vereeniging, Republic of So. Africa.	49 CFR 178.245–1(b)	To authorize the transportation of non-DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3 (modes 1, 2, 3.)
11391–N	DHE (Fabrication & Machining) Vereeniging, Republic of So. Africa.	49 CFR 178.245–1(b)	To authorize the transportation of non-DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3 (modes 1, 2, 3.)

Denials

11165–N—Request by Oxford Container Co. New Oxford, PA to authorize the manufacture, mark and sale of corrugated fiberboard, slotted boxes constructed to DOT–12B–65 specification equipped with two hinged handholes for use as overpack for shipment of various classes of hazardous material denied August 29, 1995.

11301–N—Request by ICI Explosives USA Inc. Dallas, TX to authorize the transportation of unclassified explosive material consisting of articles and solid substances classed in Division 1.1, waste substances (or articles); explosives, n.o.s. overpacked in packaging group II containers transported by EPA licensed hazardous waste haulers denied August 30, 1995.

11330–N—Request by Autoransportes Ideal, S.A. de C.V. Gas Ideal de Reynosa, S.A., Mexico to authorize the manufacture, marking and sale of non-DOT specification cargo tanks comparable to MC–331 cargo vehicles for use in transporting LPG, Division 2.3 denied August 2, 1995.

11394–N—Request by Amtrol West Warwick, RI to authorize the manufacture, mark and sale of non-DOT specification cylinders of stainless steel comparable to a DOT Specification 4BA denied July 7, 1995.

11477–N—Request by MTI Analytical Instruments Inc. Fremont, CA to authorize the transportation in commerce of analytical equipment which contain a cylinder equipped with a pressure regulator for use in transporting helium, Division 2.2 denied July 11, 1995.

Issued in Washington, DC, on January 5, 1996.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–957 Filed 1–23–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board [1]

[Docket Nos. AB–450 (Sub-No. 1X) and AB–290 (Sub-No. 141X)]

Ogeechee Railway Company; Discontinuance of Service Exemption—Between Cochran and Hawkinsville, GA; Norfolk Southern Railway Company; Abandonment Exemption—Between Cochran and Hawkinsville, GA

Ogeechee Railway Company (Ogeechee) and Norfolk Southern Railway Company (NS) have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for Ogeechee to discontinue service over and NS to abandon 9.53 miles of rail line between milepost L–0.0 at Cochran and milepost L–9.53 at Hawkinsville, in Bleckley and Pulaski Counties, GA.

Ogeechee and NS certify that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board 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 reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

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/discontinuance 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. 10502(d) [formerly 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 February 23, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by February 5, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 13, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, Washington, DC 20423.

A copy of any pleading filed with the Board should be sent to applicants' representatives: John M. Robinson, for Ogeechee, 9616 Old Spring Road, Kensington, MD 20895; and James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicants have filed an environmental report which addresses the effects of the abandonment/discontinuance, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 29, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–826 Filed 1–23–96; 8:45 am]

BILLING CODE 4915–00–P

[2] A stay will be issued routinely by the Board in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Board to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Surface Transportation Board [1]

[Docket No. AB–290 (Sub-No. 178X)]

Georgia Southern and Florida Railway Company; Abandonment Exemption in Mitchell and Worth Counties, GA

Georgia Southern and Florida Railway Company (GS&F) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon an 18-mile rail line extending between milepost GS–75.0 at Bridgeboro and milepost GS–93.0 at Camilla, in Mitchell and Worth Counties, GA.

GS&F has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or 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. 10502(d) [formerly 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 February 23, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 5, 1996.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 13, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

GS&F 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 January 29, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, 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 other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board 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 Board may take appropriate action before the exemption's effective date.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board 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.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1054 Filed 1–23–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[Docket No. AB–43 (Sub-No. 161X)]

Illinois Central Railroad Company; Abandonment Exemption; in Cook County, IL

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.4-mile line of railroad between milepost CI–7.8 and milepost CI–8.2 in McCook, in Cook County, IL.

IC 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 complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board 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 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on 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) [now 10502(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 February 23, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by February 5, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 13, 1996. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Ave., N.W., Washington, DC 20423. In addition, one copy must be served on Myles L. Tobin, Associate General Counsel, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, 20th Floor, Chicago, IL 60611.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Board's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 29, 1996. A copy of the EA may be obtained by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser 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: January 18, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1055 Filed 1–23–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[Finance Docket No. 32843]

Norfolk and Western Railway Company and The Cincinnati, New Orleans and Texas Pacific Railway Company; Trackage Rights Exemption; Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company and The Cincinnati, New Orleans and Texas Pacific Railway Company (collectively, NS), over the following trackage: (1) Approximately 6.1 miles between Bannon, milepost 137.6 at South Columbus, and CP-Camp, milepost 131.5 at Columbus, OH; (2) approximately 0.6 miles between CP-Camp, milepost 131.5, and the Auburn Switch, milepost 139.7 at Columbus, OH; and (3) approximately 115.3 miles between the Auburn Switch, milepost 139.7, and milepost 255.0 at Cincinnati, OH. Overhead trackage rights also are granted by Conrail to NS over a secondary route in and around Columbus, OH, as follows: (1) Approximately 5.2 miles between CP-Camp, milepost 131.5, and CP-Mounds, milepost 126.3 at Columbus, OH, and (2) approximately 5.9 miles between CP-Mounds and W. Alton, milepost 146.0 at Columbus, OH. The total trackage rights over both routes is 133.1 miles.

The purpose of this transaction is to provide NS with a more efficient route for traffic moving between or through Cincinnati and Columbus, OH. The trackage rights were to become effective on or after December 29, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis 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 a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 11323. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly 10505(d)] may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Board and served on: Robert J. Cooney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: January 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1053 Filed 1–23–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 3, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early February 1996, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by January 17, 1996. To obtain a copy of this information collection, please write to the IRS Clearance Officer at the address listed below. Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 95–019–G.

Type of Review: Revision.

Title: Problem Resolution Program (PRP) Case Processing Customer Opinion Survey.

Description: Over the last two years, IRS has made changes to its case processing quality standards. In light of these changes, the duration of time since IRS last solicited customer feedback, considerable costs of processing case work and measuring results, IRS needs to determine whether the data it is gathering, especially on the timeliness, accuracy and communication elements of its case work reflects the perception of its customers on elements.

Respondents: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Burden Hours per Respondent: 7 minutes, 30 seconds.

Frequency of Response: Other.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–1009 Filed 1–23–96; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

January 3, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0088.

Form Number: None.

Type of Review: Extension.

Title: Foreign Assembler's Declaration (With Endorsement By Importer).

Description: The information is used to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,730.

Estimated Burden Hours Per Respondent/Recordkeeper: 50 minutes.

Frequency of Response: Other (with every importation of merchandise under this tariff classification).

Estimated Total Reporting/ Recordkeeping Burden: 302,402 hours.

OMB Number: 1515–0157.

Form Number: None.

Type of Review: Extension.

Title: Exportation of Used Self-Propelled Vehicles.

Description: This information collection requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.

Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 83,330 hours.

Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–1010 Filed 1–23–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning an existing regulation, 26 CFR 601.201, Instructions for Requesting Rulings and Determination Letters.

DATES: Written comments should be received on or before March 25, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Requesting Rulings and Determination Letters.

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Abstract: The IRS issues ruling letters and determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The procedural regulations set forth the instructions for requesting ruling and determination letters.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: All taxpayers.

Estimated Number of Respondents: 271,914.

Estimated Time Per Respondent: The estimated annual burden per respondent varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 55 minutes.

Estimated Total Annual Burden Hours: 248,496.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: January 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–1064 Filed 1–23–96; 8:45 am]

BILLING CODE 4830–01–P

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning an existing final regulation (IA–5–92), Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals.

DATES: Written comments should be received on or before March 25, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Carryover of Passive Activity Losses and Credits and at Risk Losses to Bankruptcy Estates of Individuals.

OMB Number: 1545–1375.

Regulation Project Number: IA–5–92 Final.

Abstract: These regulations provide rules for the carryover of a debtor's passive activity loss and credit under section 469 and any ''at risk'' losses under section 465 to the bankruptcy estate. The regulations apply to cases under chapter 7 or chapter 11 of title 11 of the United States Code.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 600,000.

Estimated Time per Respondent: The estimated annual burden per respondent varies from .5 hour to 1.5 hour, depending on individual circumstances, with an estimated average of 1 hour.

Estimated Total Annual Burden Hours: 600,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: January 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–1062 Filed 1–23–96; 8:45 am]

BILLING CODE 4930–01–P

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning existing regulations, PS–1–83 and PS–259–82, Certain Elections under the Subchapter S Revision Act of 1982; and PS–262–82, Definition of an S Corporation.

DATES: Written comments should be received on or before March 25, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections under the Subchapter S Revision Act of 1982; and Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–1–83 Notice of Proposed Rulemaking; PS–259–82 Temporary; PS–262–82 Final.

Abstract: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress.

Current Actions: There is no change to the collection of information in these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: January 18, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–1063 Filed 1–23–96; 8:45 am]

BILLING CODE 4830–01–P

Agency Information Collection Activities; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning an existing regulation, LR–1214, Discharge of Liens.

DATES: Written comments should be received on or before March 25, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545-0854.

Regulation Project Number: LR–1214 Final.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to the collection of information in this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals, businesses or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 200.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Approved: January 17, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–1065 Filed 1–23–96; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under Office of Management and Budget (OMB) Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of E.O. 10450. USIA has requested approval for a revision and three-year extension of an information collection entitled ''Overseas Activities Data'', under OMB control number 3116–0014 which expires February 28, 1996. Estimated burden hours per response is thirty minutes.

DATE: Comments are due on or before February 23, 1996.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: 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 Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on

November 14, 1995 (60 FR 57264). Public reporting burden for this collection of information is estimated to average thirty minutes 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 information collection, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Title: Overseas Activities Data.

Form Numbers: IAP–10.

Abstract: The form serves as a supplement to SF–86, ''Security Investigation Data for Sensitive Positions'' and is used to obtain names of persons currently in the United States, who have personal knowledge of the overseas activities of applicants for employment in the domestic or foreign service. The information is for security purposes only.

Proposed Frequency of Responses

No. of Respondents—200
Recordkeeping Hours—.50
Total Annual Burden—100

Dated: January 19, 1995.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96–1060 Filed 1–23–96; 8:45 am]

BILLING CODE 8230–01–M

Reporting and Information Collection Requirements Under Office of Management and Budget (OMB) Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a revision and three-year extension of an information collection entitled ''College and University Affiliations Program'', under OMB control number 3116–0179 which expires February 28, 1996. Estimated burden hours per response is thirty hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before February 23, 1996.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett@USIA.GOV; and OMB review: Mr. Jefferson Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: 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 Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on November 7, 1995 (60 FR56186).

Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0179) is estimated to average thirty hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Title: ''College and University Affiliations Program''

Form Numbers: None.

Abstract: Under the College and University Affiliations Program, USIA offers grants-in-aid to support the development or enhancement of institutional partnerships between U.S. and foreign colleges and universities. The program promotes mutual understanding, strengthens research and teaching capabilities, and improves the academic curricula.

Proposed Frequency of Responses

No. of Respondents—130

Recordkeeping Hours—30

Total Annual Burden—3,900

Dated: January 19, 1996.

Rose Royal,

Federal Register Liaison.

[FR Doc. 96–1061 Filed 1–23–96; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 61, No. 16
Wednesday, January 24, 1996

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).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

Staff Briefing for the Board of Directors

TIME AND DATE: 2 p.m., Thursday, February 1, 1996.

PLACE: Room 0204, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning; update on legislative issues affecting the RTB and RUS telecommunications loan programs; status of State Telecommunications Modernization Plans; and bylaw requirements in connection with the upcoming election of Board Directors.

Regular Meeting of the Board of Directors

TIME AND DATE: 9 a.m., Friday, February 2, 1996.

PLACE: Williamsburg Room, Jamie L. Whitten Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approval of Minutes of the November 3, 1995, Board meeting.
3. Report on loans approved in the first quarter of FY 1996.
4. Review of first quarter financial statements for FY 1996.
5. Report of ad hoc committee on privatization of the RTB.
6. Establish date and location of next regular Board meeting.
7. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: January 19, 1996.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 96–1122 Filed 1–22–96; 8:45 am]

BILLING CODE 3410–15–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, January 29, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 19, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–1123 Filed 1–22–96; 8:45 am]

BILLING CODE 6210–01–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3–96

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Mon., March 4, 1996 at 10:00 a.m.— Consideration of Proposed Decisions on claims against Albania.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on January 19, 1996.

Judith H. Lock,

Administrative Officer.

[FR Doc. 96–1105 Filed 1–19–96; 4:34 pm]

BILLING CODE 4410–01–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: March 4–6, 1996, 8:30 a.m. to 5 p.m.

LOCATION: Sherton City Centre Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037; (202) 775–0800.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004–1107; (202) 272–2004 (Voice), (202) 272–2074 (TT), (202) 272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this

meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council shall be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director.
Committee Meetings and Committee Reports.
National Disability Policy: A Progress Report Update.
National Summit on Disability Policy Update.
Unfinished Business.
New Business.
Announcements.
Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on January 19, 1996.

Ethel D. Briggs,

Executive Director.

[FR Doc. 96–1145 Filed 1–20–96; 2:55 pm]

BILLING CODE 6820–BS–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 22, 29, February 5, and 12, 1996.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of January 22

There are no meetings scheduled for the Week of January 22.

Week of January 29—Tentative

Tuesday, January 30

10:00 a.m.
Briefing by DOE on Status of High Level Waste Program (Public Meeting)

Wednesday, January 31

10:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)
2:00 p.m.
Discussion of Full Power Operating License for Watts Bar (Public Meeting)
(Contact: Fred Hebdon, 301–415–2024)

Week of February 5—Tentative

Wednesday, February 7

10:00 a.m.
Briefing on System Reliability Studies (Public Meeting)
(Contact: Patrick Baranowsky, 301–415–7493)

Week of February 12—Tentative

There are no meetings scheduled for the Week of February 12.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commision, 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, DC 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: January 19, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–1149 Filed 1–20–96; 2:55 pm]

BILLING CODE 7590–01–M

Federal Register

Wednesday
January 24, 1996

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards Rear Impact Guards; Rear Impact Protection; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–11, Notice 11]

RIN 2127–AA43

Federal Motor Vehicle Safety Standards Rear Impact Guards; Rear Impact Protection

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

ACTION: Final rule.

SUMMARY: This final rule establishes two Federal Motor Vehicle Safety Standards (FMVSS) which will operate together to reduce the number of injuries and fatalities resulting from the collision of passenger vehicles with the rear end of heavy trailers and semitrailers. The first standard (FMVSS No. 223, Rear Impact Guards, or the ''equipment standard'') specifies performance requirements that rear impact guards (guards) must meet before they can be installed on new trailers and semitrailers. It specifies strength requirements, as well as test procedures that NHTSA will use to determine compliance with the standard. The guard may be tested for compliance while mounted to a non-vehicle ''test fixture'' or a complete vehicle. The equipment standard also requires the guard manufacturer to provide instructions on the proper installation of the guard. The final rule also specifies requirements to ensure energy absorption by the guards.

The second standard (FMVSS No. 224, Rear Impact Protection, or the ''vehicle standard'') requires that most new trailers and semitrailers with a Gross Vehicle Weight Rating of 4,536 kilograms (kg) (10,000 pounds (lbs)) or more be equipped with a rear impact guard meeting the equipment standard. Requirements for the location of the guard relative to the rear end of the trailer are also specified in the vehicle standard. The vehicle standard further requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

DATES: This rule will become effective on January 26, 1998. Petitions for reconsideration of this rule must be received no later than March 11, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington DC 20590. Telephone: (202) 366–5267.

FOR FURTHER INFORMATION CONTACT: Dr. Leon DeLarm, Dr. George Mouchahoir, or Mr. Sam Daniel, in the Office of Vehicle Safety Standards (Telephone: 202–366–4919), or Mr. Paul Atelsek, in the Office of the Chief Counsel (202–366–2992), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Safety Problem

This rule addresses the problem of rear underride crashes, in which a passenger car, light truck, or multipurpose vehicle with a Gross Vehicle Weight Rating (GVWR) of 4,563 kg (10,000 lbs) or less (referred to collectively in this rule as passenger vehicles) collides with the rear end of a trailer or semitrailer (trailers and semitrailers are referred to collectively in this rule as trailers) and the front end of the passenger vehicle slides under (i.e., underrides) the rear end of the trailer. Underride occurs to some extent in most collisions in which a passenger vehicle crashes into the rear end of a large trailer because most trailer beds are higher than the hoods of passenger vehicles. In the worst cases, referred to as passenger compartment intrusion (PCI) or ''excessive underride'' crashes, the passenger vehicle underrides so far that the rear end of the trailer strikes and enters its passenger compartment. PCI collisions generally result in passenger vehicle occupant injuries and fatalities caused by occupant contact with the rear end of the trailer.

The solution to PCI is upgrading underride guards to make them stronger, but this introduces another concern. Even if guards succeed in preventing PCI, overly rigid guards may stop the passenger vehicle too suddenly, resulting in excessive occupant compartment deceleration forces and killing or injuring passenger vehicle occupants.

The agency estimates that about 11,551 rear-end crashes with trucks, trailers, and semitrailers occur annually. These crashes result in approximately 423 passenger vehicle occupant fatalities and about 5,030 non-fatal injuries.

II. Existing Regulations

The initial Federal regulation addressing the issue of heavy vehicle rear underride was issued in 1953 by the Bureau of Motor Carriers of the Interstate Commerce Commission (presently the Office of Motor Carriers of the Federal Highway Administration, DOT). This regulation (49 CFR 393.86), which is still in effect, requires heavy trucks, trailers, and semitrailers to be equipped with a rear-end device designed to help prevent underride. The rule requires that the ground clearance of the underride guard not exceed 760 mm (30 inches (in)) when the vehicle is empty. The rule also requires that the device be located not more than 610 mm (24 in) forward of the rear of the vehicle and that it extend laterally to within 460 mm (18 in) of each side. The regulation further requires that the ''[guards] shall be substantially constructed and firmly attached.''

The Research and Special Programs Administration (RSPA) of DOT has

specified configuration requirements for guards on tankers that carry hazardous materials (49 Part 178.345–8). The bottom of the guard must be at least 100 mm (4 in) below the lower surface of any part of the rear of the vehicle, and not more than 1,520 mm (60 in) from the ground when the tanker is empty. The guard must be very strong. It must deflect 150 mm (6 in) forward when subjected to a 20 m/s^2 (2 G) impact while loaded, without contacting the cargo tank. These requirements are designed primarily to protect the tank and piping, not the colliding vehicle, in the event of a rear end collision.

III. Past Proposals

From time to time, NHTSA has assessed the requirements of the Federal Highway Administration's (FHWA) regulation and considered whether NHTSA should issue a Federal Motor Vehicle Safety Standard (FMVSS) requiring heavy vehicles to be equipped with rear underride protection. The issues of particular concern have been the requirements for rear end guard ground clearance, guard strength, and the injury and fatality benefits of such a standard. The most recent of several NHTSA notices was a Supplemental Notice of Proposed Rulemaking (SNPRM) issued in 1992 (57 FR 252; January 3, 1992). Prior to the 1992 SNPRM, the agency issued a Notice of Proposed Rulemaking (NPRM) in 1981 (46 FR 2136; January 8, 1981.) The notices of proposed rulemaking issued by NHTSA and FHWA prior to the 1981 NPRM are cited and discussed in the 1981 NPRM (Docket 1–11; Notice 8).

IV. Summary of the 1981 NPRM

The 1981 NPRM proposed to adopt a FMVSS for all new trucks and trailers with a GVWR of 4536 kg (10,000 lbs) or more. This NPRM was issued after research and computer modeling studies indicated that it was feasible to manufacture light-weight guards that could prevent excessive underride and absorb crash energy. Guard energy absorption is important because overly rigid guards could result in passenger compartment forces that would increase the risk of occupant injuries even in the absence of underride.

The 1981 NPRM proposed that heavy trailers, semitrailers, and single unit (i.e., unarticulated) trucks be equipped with an underride guard that met certain requirements for strength and configuration. The NPRM proposed exclusions from this requirement for trailers with chassis that are low enough to the ground to meet the configuration requirements for the underride guard (low chassis vehicle), trailers that have the rear tires set back to within 305 mm (12 in) of the rear (wheels back vehicle), and trailers that have work-performing equipment in the lower rear whose function would be impaired by a guard (special purpose vehicle).

NHTSA tentatively concluded that the proposed standard was superior to the FHWA regulation in three major ways. First, NHTSA specified objective requirements for guard strength (FHWA requires that the guard be ''substantially constructed and firmly attached''). Second, the NPRM proposed a guard configuration that permitted less ground clearance 560 mm (22 in), less longitudinal distance between the guard and the trailer rear extremity 305 mm (12 in), and less lateral distance between the guard and the vehicle side extremities 100 mm (4 in), than the FHWA regulation. Third, the NPRM specified detailed procedures for testing the guards as installed on the vehicle for which they were intended by applying a specific force at certain points on the guard.

V. Summary of 1981 NPRM Comments

The agency received over 100 comments on the NPRM. Many of the comments were from vehicle manufacturers and operators who believed their vehicles should be excluded from the requirements because they were special purpose vehicles. Some commenters objected to the proposed requirements and suggested alternative means of reducing the injuries and deaths caused by rear underride crashes. The alternative approach most often cited involved reducing the incidence of underride crashes through improved heavy vehicle conspicuity.

The agency agreed that conspicuity was an important issue. The Fatal Accident Reporting System (FARS, a database containing a census of all vehicle fatalities in the U.S.) statistics had indicated that about 65 percent of the fatalities resulting from passenger vehicle collisions with the rear end of heavy vehicles occurred under non-daylight conditions. NHTSA conducted a fleet study between 1980 and 1985 of the effectiveness of improved conspicuity. As a result of this study, the agency determined that conspicuity improvement could reduce the incidence of the accidents by about 15 percent. Consequently, the agency published a NPRM on improved heavy vehicle conspicuity in December 1991, (56 FR 63474) and a final rule on conspicuity improvement in December 1992 (57 FR 58406).

The agency believes, however, that improved rear impact guards could mitigate some of the rear impact fatalities and serious injuries not addressed by the improved conspicuity rule. The rear impact guard is especially important in cases in which the passenger vehicle driver's abilities are impaired by alcohol or drowsiness. Accident data indicate that alcohol is a factor for passenger vehicle drivers in about 30–40 percent of fatal rear underride accidents.

Commenters on the 1981 NPRM also expressed concern that the proposed requirements would be a substantial financial burden on some truck and trailer manufacturers. Several commenters argued that the agency's cost estimate for rear underride guards was well below the actual cost of equipping the wide variety of single unit trucks with compliant guards. As to the trailer manufacturing industry, its members were said to be predominantly small firms that lack the engineering capabilities to meet the requirements of the proposed rule. In response to the comments and statistical data, the agency sought to determine if it could revise the proposed rule to reduce the financial burden on the manufacturers.

VI. Summary of the 1992 SNPRM

The 1992 SNPRM contained requirements that are similar to those in the 1981 NPRM in terms of the guard's strength and configuration. However, the SNPRM differed substantially from the NPRM in terms of its impact on the industry. In place of the 1981 proposal of a single vehicle standard specifying the testing of guards on a completed vehicle, the SNPRM proposed two standards: (1) An equipment standard providing for the testing of guards on a test fixture, and (2) a vehicle standard requiring installation of guards complying with the equipment standard.

The equipment standard proposed strength requirements and an objective test for determining compliance with these requirements. The guard manufacturer would conduct a test involving quasi-static loading of the guard with the guard mounted on a rigid test fixture rather than installed on a completed vehicle. Guards certified as passing the test could then be marketed to vehicle manufacturers for installation in accordance with the configuration requirements of the vehicle standard. Testing in this manner would relieve vehicle manufacturers, especially small ones, of the burden associated with compliance testing.

The other major difference from the NPRM is that the SNPRM proposed to exclude single unit trucks from the rulemaking. NHTSA added this

exclusion to those in the NPRM because single unit trucks are far less likely to be involved in fatal accidents than combination trucks (i.e., trailers and semitrailers). FARS and GES accident statistics indicate that only about 27 percent of the 423 average annual rear end fatalities and 18 percent of the 5,030 injuries involve single unit trucks, even though these vehicles represent 72 percent of the registered heavy vehicles. Thus, single unit trucks are significantly under-represented in rear end crashes. On the other hand, trailers are highly over-represented in rear end crashes, as they represent only 28 percent of the registered heavy vehicles, but account for 73 percent of the occupant fatalities and 82 percent of the injuries. Therefore, the agency believed that excluding single unit trucks from the proposed rule would result in a better rule in terms of the ratio of benefits to costs.

VII. Summary of 1992 SNPRM Comments

The agency received approximately 2,250 individual comments on the SNPRM. Industry-related comments were generally supportive of the proposal, while consumer interest organizations, local and State governments, and private citizens were generally critical.

Representing the industry were comments from automobile and truck manufacturers, trade associations, manufacturers of trailers and semitrailers, and manufacturers of specialized usage heavy duty vehicles. Most of these commenters supported Federal rulemaking in this area. The trade associations and manufacturers of trucks and trailers were generally in agreement with the proposed requirements. Manufacturers and operators of specialized vehicles suggested that the proposed rule be modified to better define the types of vehicles that would be excluded from the standard.

The vast majority of the critical comments were post cards or letters with multiple signatures from private citizens. These post cards and letters, as well as more detailed submittals from consumer interest organizations, expressed concern that the agency's proposal had three deficiencies. First, the commenters recommended that the rulemaking apply to single unit trucks as well as trailers and semitrailers. Second, the commenters recommended that the proposed maximum ground clearance, 560 mm (22 in), be reduced to a 405 to 455 mm (16 to 18 in) range. Third, these commenters expressed the opinion that the agency should mandate ''energy absorbing'' rear impact guards for heavy vehicles, i.e., guards with hydraulic pistons or shock absorbers designed to deflect or deform in a controlled manner upon impact and thereby lessen the deceleration experienced by passenger vehicles colliding with them. Several consumer interest organizations and private citizens also suggested that the proposed minimum guard strength requirements were insufficient.

The consumer interest organizations and some private citizens also expressed concern that the proposed equipment standard for the rear impact guard did not require guards to be tested while mounted on a vehicle. As a result, guards complying with the proposed strength requirements could be installed on vehicles in such a location or in a manner that the guard/vehicle combination would be ineffective. In addition, some of these commenters stated that the crash tests NHTSA relied on in formulating the SNPRM were inadequate because they were not conducted under representative conditions of guard height, car bumper height, and car speed. Specifically, they stated that car bumper height would be depressed if the driver were braking to avoid colliding with the trailer, thus increasing the likelihood that the car hood would underride a 560 mm (22 in) high guard without engaging any substantial body structure. The consumer interest organizations also questioned the validity of the FARS accident data that NHTSA used to determine the benefits of the SNPRM, contending that the agency had underestimated the benefits of the rule. The state and local governments that commented expressed concerns similar to those raised by private citizens and consumer interest organizations.

A summary of comments has been prepared and is available for inspection in Docket No. 1–11. Significant SNPRM issues raised by the commenters and NHTSA's response to the comments are discussed below. In response to the comments, the final rule includes several modifications to the rule proposed in the SNPRM, including clarified definitions, improved compliance test procedures, and a minimum guard energy absorption requirement.

VIII. Recent Testing by NHTSA

In responding to comments to the SNPRM and a congressional request for a report on several heavy truck underride issues, NHTSA conducted a research project on Heavy Truck Rear Underride Protection at the Vehicle Research and Testing Center (VRTC) between September 1992 and June 1993 to evaluate the effectiveness of an underride guard meeting the requirements of the SNPRM. A copy of the test report (VRTC–82–0267) was placed in the public docket (No. 01–11–N09–54. See also Publication No. DOT–HS–808–081).

For the purposes of the evaluation, NHTSA took the conservative approach of modifying the most common conventional guard design and developed a rear impact guard that was only slightly (10 percent) stronger than the minimum requirements of the SNPRM when tested at the vertical supports, which is the most significant location along the width of the guard's horizontal member. NHTSA arrived at this ''minimally complying'' design through an iterative process of fabrication and testing in accordance with the proposed compliance test procedures.

These minimally compliant guards were then evaluated in two series of full scale crash tests. The guards provided the proposed maximum ground clearance 560 mm (22 in). For the initial series of crash tests, the guards were mounted to a test fixture simulating the geometry of the rear end of heavy trailers. The guards were mounted on a late model production trailer for the other series. A total of seven crash tests were conducted with the minimally complying guard design. The tests were conducted at an impact speed of 48 kph (30 miles per hour (mph)) with late model compact and subcompact cars with mass between 1135 and 1590 kg (or weight between 2500–3200 lbs). In each category, vehicles were selected which had low hood profiles, and were therefore most likely to underride the 560 mm (22 in) guard height.

Four of the seven crash tests resulted in no PCI when the minimally compliant guard was mounted flush with the rear extremity of the trailer and simulated trailer. See Tables 6, 8, and 10 of the VRTC test report. The hood of one passenger car was driven through the windshield during one of these tests (Corsica 1, VRTC test report, page 26). The magnitude of the passenger compartment intrusion by the hood was marginal, however, and the test dummies were not contacted by the hood during the collision. Two cases of PCI were caused by guard system failure, one in a simulated trailer test and one in a production trailer test (respectively, Saturn 1 in Table 8 and Corsica (trailer) in Table 10 of VRTC test report). The guard system failure in the simulated trailer test was due to attachment hardware failure. The failure in the production trailer test was the

result of trailer structural failure at the guard attachment locations. In each case, the guard attachment hardware and the trailer structure were upgraded with simple, inexpensive materials for subsequent tests. Retests with the modified hardware and trailer frame showed adequate guard system performance.

All these crash tests included Hybrid III test dummies positioned in the driver and outboard front passenger seating locations for each crash test. The procedures used for frontal barrier crash test preparation under FMVSS No. 208, *Occupant Crash Protection*, were followed with respect to dummy positioning, restraint usage, and dummy instrumentation. Dummy instrumentation indicated very low potential for serious or fatal injury in all seven of the crash tests with the minimally compliant guard, even those in which there was PCI.

The VRTC research project also performed a crash test using a very strong, i.e., ''rigid,'' guard, to compare the amount of underride and deceleration forces generated with those generated by the minimally compliant guard. The 48 kph (30 mph) impact generated a peak force of about 415 kN (93,000 lbs) and the guard sustained an insignificant amount of permanent deformation. Although underride in this crash test was minimal, occupant compartment forces generated during the crash were significant, with on-board dummy readings indicating a potential for serious driver chest injuries (dummy chest acceleration was 61 G, slightly higher than the 60 G permitted in FMVSS No. 208, Occupant Crash Protection). A similar crash test with the minimally compliant guard was conducted with the same make and model passenger vehicle. The minimally compliant guard, with a force resistance capability of about 200 kN (45,000 lbs), allowed more underride than the rigid guard and marginal PCI. However, at 48 kph (30 mph), the minimally compliant guard test generated occupant compartment forces low enough that they posed essentially no potential for life-threatening occupant injuries. This test further demonstrated the adequacy of the proposed guard ground clearance requirement of 560 millimeters (mm) (22 in).

IX. Overview of the Final Rule

This rule establishes two Federal Motor Vehicle Safety Standards. The two standards are being announced in this single notice because they are complementary and because their substantive requirements both derive from a single standard proposed in an earlier NPRM (Docket No. 1–11, notice 8). The first standard will be referred to as the ''equipment standard'' because it sets forth requirements that a rear impact guard must meet as an item of motor vehicle equipment. The second standard will be referred to as the ''vehicle standard'' because it requires a new trailer or semitrailer to be equipped with a guard that meets the equipment standard.

The equipment standard specifies the procedures that the agency will use when testing a guard. The guard is first mounted to a rigid test fixture or a secured trailer, in accordance with the installation instructions which the guard manufacturer is required to provide. The standard describes how to select three test locations across the width of the guard. At these three locations, the testing procedure provides that force be slowly applied until the guard has been deflected by 125 mm (5 in). The standard specifies procedures for determining whether the tested guard has met the minimum requirements for strength and energy absorption. Guards that can pass the strength and energy absorption tests may be certified and labeled as complying with the equipment standard and sold to vehicle manufacturers if accompanied by the necessary attachment hardware and mounting instructions.

The guard mounting instructions are a crucial interface between the equipment standard and the vehicle standard. NHTSA has modified the equipment standard proposed in the SNPRM to require the guard manufacturer's instructions to include (1) a description of the types of structures to which attachment must be made, and (2) the manner in which attachment must be made, in order for the guard to perform in its designed fashion.

The vehicle standard requires that most new trailers and semitrailers be equipped with a rear impact guard certified to the equipment standard. The vehicle manufacturer can manufacture and certify the guards according to the equipment standard, or simply purchase and install certified guards from a guard manufacturer. The vehicle standard requires that the guards extend laterally to within 100 mm (4 in) of the sides of the trailer, that the guard have a ground clearance of no more than 560 mm (22 in), and that the guard be placed as close to the rear of the vehicle as possible. To ensure that the guard will perform properly, the vehicle standard further requires that the guard be mounted on the trailer or semitrailer in accordance with installation instructions provided by the guard manufacturer.

The vehicle standard lists and defines certain types of vehicles that are excluded from the requirement to have rear impact guards. Single unit (unarticulated) trucks, truck tractors, pole trailers, low chassis vehicles, special purpose vehicles, and wheels back vehicles do not have to have rear impact guards.

X. Summary of Changes From the 1992 SNPRM

The greatest change from the SNPRM is the addition to the equipment standard of a requirement for energy absorption. The SNPRM would have permitted fairly rigid guards because it did not require the guard to yield in response to force. Rigid guards may stop the passenger vehicle too quickly, causing occupant deaths and injuries from sudden deceleration. To ensure that the guards will yield, this rule adds a requirement that the guards absorb a certain amount of energy during the strength test. The new requirement does not necessitate the use of any additional new test equipment or the following of any additional test procedures. It does require more frequent measurements of the load during the strength test, and a few extra calculations after the test.

The test procedures in the equipment standard have been modified to allow velocity-sensitive rear impact guards. Velocity-sensitive guards would have failed the quasi-static strength test procedure proposed in the SNPRM because these guards are designed to provide resistance that is proportional to the displacement rate, and the test procedure displaces the guard very slowly. The final rule provides for modifying the guards to deactivate the energy absorbing components prior to the strength test. Because velocity sensitive guards typically have excellent energy absorption characteristics and because quasi-static testing does not test their energy absorbing capabilities, velocity-sensitive guards do not have to be tested for energy absorption. The only type of velocity-sensitive guards that the agency is aware of use hydraulic fluid properties to deform in a controlled manner. Therefore, these ''hydraulic guards'' are the only ones excluded from the energy absorption test.

The final rule requires greater specificity in statements regarding trailer structure in the installation instructions provided by the guard manufacturer. The SNPRM said only that the instructions had to specify the types of vehicles for which the guard was intended, state the necessity for

attaching the guard to the vehicle chassis, and explain how the attachment hardware was to be used. The regulatory text of the final rule makes it clear that the installation instructions must specify all aspects of the trailer that are necessary to the proper functioning of the guard. The test procedure has been modified to indirectly test the adequacy of the attachment.

NHTSA has changed some of the guard configuration requirements in the vehicle standard. The SNPRM proposed to require that the horizontal member of the guard extend to within 100 mm (4 in) of the side extremities of the vehicle and to within 305 mm (12 in) of the rear extremities. These requirements have been modified to allow rounded guard ends. The final rule allows an extra six inches in these dimensions only for the portion of a guard that is curved. Using rounded guard ends will diminish the hooking potential of the guards when the trailer is turning sharply. Guard ends that are rounded upward and attached to the vehicle may add strength to the horizontal member near the side extremity of the vehicle.

To account for high, overhanging rear protrusions on trailers, NHTSA changed the definition of the vertical zone to be considered when determining the trailer's ''rear extremity.'' Determination of the ''rear extremity'' is important because the location of the guard is based on the location of the rear extremity. The SNPRM defined ''rear extremity'' as the rearmost point above 560 mm (22 in) from the ground. Since high overhangs pose no risk to colliding passenger vehicles, NHTSA has set a maximum height of 1905 mm (75 in) from the ground on the zone. Higher protrusions will not be considered as the rear extremity.

Another change in the configuration requirements is that the final rule requires the guard to be mounted as close to the rear extremity as practical within the 305 mm (12 in) zone forward of the rear extremity. The SNPRM did not regulate where in the zone the guard had to be mounted.

XI. Analysis and Response to Comments on the 1992 SNPRM

A. Separate Equipment and Vehicle Standards

Companies such as Waltco and industry groups such as the National Truck Equipment Association supported the separate equipment and vehicle standards as a method to prevent undue testing burdens.

One of the concerns raised by consumer interest organizations is that allowing the guards to be tested on a ''non-vehicle'' rigid test fixture posed a problem if it is done in the expectation that the guards would necessarily perform in a similar manner once they are installed on vehicles. The Institute for Injury Reduction (IIR) commented that neither the equipment standard nor the vehicle standard specifies or regulates the interface between the guard and the vehicle. Therefore, IIR was concerned that there are no ''real-world'' tests performed on the guards as installed on the vehicle and suggested that it is unclear whether a failure of such a test would represent noncompliance by the guard manufacturer, the vehicle manufacturer, both, or neither.

NHTSA agrees that an underlying assumption of this regulatory scheme is that the guards would perform in the real world in a manner similar to the way they do in the tests. This assumption is supported by the results of the VRTC research project, which show that the maximum force measured in quasi-static tests is similar to the maximum force generated in dynamic crash tests. Moreover, this regulatory scheme has worked well for tires, which also have separate equipment (49 CFR 571.109) and vehicle (§ 571.110) standards.

NHTSA disagrees with IIR's argument that separate guard and vehicle standards leave the guard/vehicle interface unregulated. The vehicle standard specifies that the guard be attached in accordance with the guard manufacturer's installation instructions, the same instructions used to attach the guard to the test fixture during agency compliance testing under the equipment standard.

When writing installation instructions, the guard manufacturer must take into account the possibility of inadequate trailer structure to support the guard. Depending on the guard design, the guard manufacturer may want to specify in the instructions that the guard cannot be attached to certain structures (e.g., floorboards) and that it must be attached to other surfaces, for example, frame rails with a horizontal surface and specified wall thickness of a certain material (e.g., hardened steel). The guard manufacturer may have to specify local reinforcement if the trailer chassis is inadequate to pass the compliance test with the chassis surface mounted on the rigid test fixture.

The installation instructions must be appropriate to the trailer design, so that the vehicle manufacturer knows which guard to purchase and does not have to deviate from the instructions to install the guard. To help assure this, the regulatory text has been modified to make it clear that the guard manufacturer must either list appropriate trailers or specify in the installation instructions all attributes that make a trailer suitable for the proper installation and functioning of the guard. These include the types of trailer structures, design types with dimensions, materials thickness and tire track widths that are appropriate as an installation location.

NHTSA will install the guards during compliance testing based on these instructions. Therefore, it is essential that the attachment site and attachment method be adequately specified. This is especially important to avoid failure of the attachment itself during the test.

In a VRTC test of the minimally complying guard mounted on a typical trailer, the trailer frame rails worked with the guard by bending/deforming to absorb the colliding vehicle's crash energy. However, the attachment site on the frame rails had to be strengthened with an inexpensive local reinforcement.

IIR's argument that failure during compliance testing would leave the identity of the non-complying party in doubt is incorrect. The only testing procedures in NHTSA's rule are the compliance tests in the equipment standard. Therefore, the only party that can be responsible for a testing failure is the guard manufacturer. Noncompliance by the vehicle manufacturer may be established by inspecting the vehicle and observing improperly installed guards, such as during an FHWA heavy truck inspection. If the vehicle manufacturer manufactures the guard which it uses, as NHTSA believes will usually be the case, there will be no ambiguity as to the party responsible for testing failure or improper installation.

B. Standard for Equipment

1. Relationship of Strength, Energy Absorption, and PCI

In specifying performance standards for rear impact guards, the agency must balance various performance attributes. The vast majority of the commenters, including virtually all of the consumer safety groups, asserted that underride guards should be strong, yet energy absorbing. NHTSA agrees that these are both desirable properties in an underride guard, but emphasizes that an increase in strength may result in a decrease in the capability of the guard to absorb energy, and vice versa. An impact guard strong enough to restrain a large car travelling at high speeds would impart high deceleration forces to a small car crashing into it at the

same speed. Conversely, an impact guard that is optimized to restrain a small car without excessive deceleration forces might fail (i.e., deform so much that it allows PCI) if a large car crashes into it, or if a small car crashes into it at higher speeds.

Energy absorption must also be balanced against PCI prevention. Energy absorption may be maximized by allowing the guard to yield for a greater distance before bringing the passenger car to a stop. However, the more the guard yields, the farther the colliding vehicle travels and the greater the likelihood of PCI. This rulemaking has focussed on balancing the need for PCI-prevention against minimizing crash injuries. FARS data show a strong correlation between PCI and fatalities or serious injuries. Preventing PCI demands a guard that is strong enough to prevent the passenger vehicle from advancing very far after contact with the guard.

Compounding the difficulty of balancing the guard's performance attributes is the wide range of colliding passenger vehicle weight, speed, and size. The combination of weight and speed determines the level of kinetic energy to which the guard will be subjected. Passenger vehicle weight generally correlates with the hood height and length, which determines how far the vehicle can proceed after contact with the guard before PCI occurs. Fortunately, these factors offset one another for large cars (i.e., the greater weight promotes greater amounts of underride, while the higher hood profile results in better guard engagement and the longer hood allows for more underride before experiencing PCI).

Small pickups and vans have relatively high profiles but a relatively short distance from the front of the vehicle to the occupant compartment. A guard would have to yield only slightly, or have high strength to prevent minivans and some pickups (which typically have a mass more than 1810 kg or weigh more than 4,000 lbs and have short hoods) from experiencing PCI. Because the passenger compartment is so close to the front of a heavy standard van, no underride guard is likely to be very effective in preventing PCI for these vehicles. Nevertheless, some reduction in fatalities and non-fatal injuries can be expected due to the initial energy absorption of the guard. Fortunately, vans have only been involved in 0.5 percent of all underride fatalities from 1982 to 1992. Pickups have been involved in about 18 percent of the fatalities during this period.

It should be recognized, therefore, that impact guards cannot be optimized for all situations. The requirements in this rule should reduce the incidence of PCI, fatalities, and injuries for all passenger vehicles, but some more than others. A minimally compliant guard should protect all passenger vehicles from PCI and excessive deceleration forces up to some speed in the 40 kph (25 mph) to 56 kph (35 mph) range, although that speed will vary on a sliding scale depending on the vehicle weight and front end profile. For example, NHTSA analytically estimates that mid and full size cars and light trucks and vans with a mass greater than 1590 kg (3,500 lbs) will experience PCI at approximately 43 kph (27 mph), while mini-compacts of less than 1135 kg (2,500 lbs) will be able to collide with the required guard at about 61 kph (38 mph) without PCI. This estimate is obtained by equating the energy absorbed by a 48 kph (30 mph) collision of a 1590 kg (3,500 lb) vehicle rigid barrier crash to the energy absorbed by a different weight vehicle). For example, for a 907 kg (2000 lb) vehicle, the calculated impact speed without PCI is: (square root of (1,590 kg/907 kg))×48 kph=63.5 kph, or (square root of (3,500 lb/2,000 lb))×30 mph=39.7 mph.

2. Guard Strength

Several consumer interest organizations and private citizens criticized the 1992 SNPRM's proposed guard strength requirements. These commenters' objections are either that guards meeting the requirements would be too weak to prevent underride or that they would be so strong that the passenger vehicle would be subjected to excessive deceleration forces. As explained above, the issues of strength and energy absorption are closely related. However, issues relating primarily to energy absorption will be addressed in the next section.

The SNPRM, which was premised upon underride protection being provided by a horizontal member, proposed to require that the horizontal member resist a force of 50 kilonewtons (kN) (11,240 lbs) applied at the center (site P2) and near the outboard ends (sites P1), and a force of 100 kN (22,480 lbs) at an intermediate position (sites P3), in separate quasi-static strength tests. For these tests, guard resistance at the specified force level would have to occur at less than or equal to a 125 mm (5 in) displacement of the guard's horizontal member.

Several commenters stated that overly ''rigid'' or non-yielding guards would be permitted by the proposed rule. They expressed concern that those guards would be too stiff, citing the results of full-scale, heavy truck rear underride crash tests conducted in the late 1970's and early 1980's by the Texas Transportation Institute (TTI), Dynamic Sciences, Inc., and the Insurance Institute for Highway Safety (IIHS). These crash tests indicated occupant compartment forces generated in collisions with rigid guards at impact speeds above 48 kph (30 mph) could produce potentially fatal driver and front passenger head and chest injuries.

Advocates for Highway and Auto Safety (Advocates) stated that the proposed guard would not perform as well as the agency expects, and would be excessively deformed or fail in impacts not much above 40 to 48 kph (25 to 30 mph). Advocates further stated that NHTSA directed its contracted researcher in 1982 to reduce the impact speed of a dynamic crash test on a Chevrolet Impala from 48 kph (30 mph) to 40 kph (25 mph), specifically to ensure that excessive underride did not occur. The actual speed of the tested 1,840 kg (4,060 lb) Chevrolet Impala was 38.5 kph (23.9 mph). Advocates contends that the agency admitted in a memorandum from Mr. Tomassoni (who worked for NHTSA at the time) that the test would have resulted in PCI at 48 kph (30 mph). IIHS also included these criticisms in its comment.

Some commenters recommended that NHTSA require specific levels of strength higher than those proposed in the SNPRM. Advocates attached a 1991 technical paper by Mr. G. Rechnitzer, of Monash University in Australia, which reviewed European truck underride data. The example with the widest application, the Economic Commission for Europe's (ECE) Regulation No. 58 for heavy truck rear underride guards, currently requires a guard force resistance of 100 kN (22,480 lbs) at the point on the guard corresponding with this rule's P3 test point, 50 kN (11,240 lbs) at the center, and up to 25 kN (5,620 lbs) at the outboard test position corresponding with this rule's P1 position. Mr. Rechnitzer recommended that the rear impact guard strength requirements be upgraded to 150 kN (33,370 lbs) at the P3 location and 100 kN (22,480 lbs) at the center and P1 locations. Mr. Byron Bloch, of Auto Safety Design, suggested an even stronger guard. He thought the rule should require that the guard resist 222 kN (50,000 lbs) at the P3 test location, where the SNPRM requires that the guard resist a force of 100 kN (22,480 lbs).

The VRTC tests indicate that the strength of the 1992 SNPRM guard is adequate for preventing underride with

PCI in a collision with an impact speed of up to 48 kph (30 mph) for vehicles with a mass of about 1,450 kg (3,200 lbs). PCI resistance would be expected at higher impact speeds for lighter vehicles and lower impact speeds for heavier vehicles. The test data also indicate that rear impact guards having somewhat more strength than the proposed level of strength could resist PCI at higher impact speeds without generating life-threatening passenger compartment force levels. Although stronger guard strengths may be desirable, the agency cannot quantify the increased benefits that might be obtained without further testing.

Based on the VRTC tests, the agency believes that the guard strength requirements proposed in the 1992 SNPRM are of sufficient magnitude to prevent PCI for most late model passenger vehicles at impact speeds of about 45 kph (28 mph). This rule has an additional requirement that guards yield enough to maintain survivable levels of occupant compartment deceleration when impacted by passenger vehicles. Therefore, the agency has decided to retain the strength requirements of the SNPRM in the final rule.

The IIHS advocated a specific guard design, which it said was preferable for strength purposes. That organization believes a diagonal strut from the horizontal member of the guard to the trailer chassis could augment guard strength without a large increase in guard weight. NHTSA agrees with the IIHS that this type of design is quite efficient with respect to weight and strength, though not necessarily with respect to energy absorption. However, the agency does not believe that it is necessary or desirable to mandate a specific design, since similar crash performance may be achieved with other designs.

3. Guard Energy Absorption

Although all non-rigid guards absorb some of the kinetic energy of the striking vehicle, there was considerable concern that the SNPRM did not require energy absorbing guards. The consumer interest organizations and about 2,200 private citizens urged NHTSA to mandate ''energy absorbing'' guards. By deforming, rear impact guard structures absorb some of the kinetic energy of the striking vehicle. The more energy the guard absorbs, the less energy must be absorbed by deformation of the striking vehicle before it stops. Commenters were concerned that the SNPRM would have permitted rigid guard designs that would impart high levels of crash forces to the striking vehicle's occupants.

As used by the consumer interest groups, the term ''energy absorbing guards'' generally refers to guards whose vertical support members are designed to pivot about their attachment braces at the vehicle chassis. These guards absorb energy by means such as cylindrical, telescoping hydraulic or plastic struts, which are also attached to the guard's horizontal member and the vehicle chassis. When impacted, these energy absorbing units respond by compressing without substantial deformation until the units have reached their maximum deflection, or ''bottomed out.'' On the other hand, the primary energy absorbing mechanism of a fixed guard, such as the design used in the VRTC tests, is the flexing and bending of the guard's vertical supports. Keeping this in mind, the agency uses the term ''energy absorbing guards'' below in the same sense as used by the commenters, as a shorthand way of referring to guard designs with special energy absorbing design features.

Advocates recommended that guards be required to be energy absorbing so that 64 kph (40 mph) impacts of small cars with the rear of heavy vehicles are survivable through the combined energy absorption of the car and the guard. The National Association of Independent Insurers (NAII) suggested that the proposed rule be modified to require a more flexible, energy absorbing guard. Citizens for Reliable and Safe Highways (CRASH) stated that the agency fails to acknowledge the need for and potential benefits from improved, slightly more expensive, energy absorbing guards that are in use in Europe.

To ensure that the guard will provide the combination of strength and energy absorption necessary to prevent underride with PCI at a specified impact speed, as recommended by Advocates, a full-scale dynamic compliance test including a passenger vehicle would be necessary. VRTC conducted full-scale crash tests with guards that were also tested in accordance with the SNPRM compliance procedures. These tests demonstrated that the proposed quasi-static compliance test is adequate for determining guard strength. The peak forces generated by the guard in the quasi-static compliance tests and the full-scale crash tests were approximately the same. Guard strength or peak force capability is the primary factor in underride prevention. Guard energy absorption characteristics determine the guard's ability to maintain impact forces at survivable levels in the striking vehicle, as well as the guard's resistance to structural failure.

The agency has decided to retain the quasi-static compliance test for guard strength due to the greater complexity and cost of a dynamic compliance test procedure. Although the guard's ability to resist PCI at a specific impact speed will not be tested directly, the VRTC tests show that dynamic guard performance can be accurately estimated from the quasi-static compliance test results. Therefore, it is not necessary to conduct expensive full-scale dynamic tests to attain most of the benefits of dynamic testing.

Advocates also stated that British researchers assess the potential fatality reduction effectiveness of stronger, energy absorbing guards at 25 to 35 percent. This is about twice the current guard effectiveness in Europe, according to the document cited by Advocates, an opinion paper by P.F. Gloyns, et al., of Vehicle Safety Consultants, Ltd., entitled ''Legislative Implications of Accident Experience in the UK of Rear Under-Run Guards.'' The Gloyns paper does not quantify the increase in guard strength or the magnitude of guard energy absorption required to achieve the estimated increase in guard effectiveness. The agency acknowledges that various combinations of guard strength and energy absorption capability could increase the effectiveness of rear impact guards. However, without more quantitative information, NHTSA cannot address the guard effectiveness claims of Gloynes, et al.

It may be that energy absorbing rear underride guards, which were referred to by CRASH and which are currently in use on one to two percent of vehicles in Europe, are superior to a moderate strength, fixed guard meeting the minimum performance requirements specified in the rulemaking proposal. The agency notes that these European guards, or guards with similar energy absorbing characteristics and design features, would not be prohibited by NHTSA's proposed rule and will no doubt be considered by the industry as a possible means of compliance, just as they were in Europe.

The agency has tested one guard, the Quinton-Hazel rear impact guard, which utilized pivoting vertical support members along with telescoping hydraulic struts and coil springs. The guard demonstrated excellent overall performance in a crash test conducted in 1979 by the Texas Transportation Institute. The striking crash test vehicle was a 1,810 kg (4,000 lb) Chevrolet and the impact speed was 56 kph (35 mph). The collision did not result in PCI, and all measured occupant responses indicated that the potential for driver

and front passenger serious injuries was low. It is estimated that similar guards would weigh about 1.33 to 3 times more and cost 3 times more than a fixed, moderate strength guard designed to meet the requirements of the SNPRM. In other words, it would cost $300–$350 and have a mass of 136 kg (300 lbs) to 181 kg (400 lbs). Further, hydraulic energy absorbing guards would be considerably more complex than fixed guards that comply minimally with this rulemaking, and would require periodic maintenance. It is NHTSA's understanding that there are currently no guards in production in this country or in Europe that utilize hydraulic or plastic energy absorbing, telescoping units. A letter from one of the former manufacturers, Quinton-Hazel, indicates that the market probably rejected them as too costly.

Nevertheless, in response to the comments recommending energy absorbing guards, the agency has added a performance requirement for guard energy absorption to the rule. The requirement does not include design specifications such as pivoting vertical supports or telescoping energy absorbing units. The agency is requiring that each guard absorb a minimum amount of energy based on the forces and displacements specified in the 1992 SNPRM. The same quasi-static compliance test procedure proposed for strength testing will be used to determine compliance with this new specification. The test for guard energy absorption will be conducted only at the P3 location used for guard strength testing. The minimum magnitude of guard energy absorption will be 5,650 joules (4,170 foot-pounds), which is based on the force required to comply with the strength test at the P3 test location and the maximum displacement allowed for the guard to generate the force (125 mm, or 5 in). The energy absorption test will require that the guard's horizontal member undergo 125 mm (5 in) of displacement while the force generated by the guard is recorded at least ten times per 25 mm. The magnitude of guard energy absorption at the P3 location is sufficient to absorb about 12 percent of the total kinetic energy of a 48 kph (30 mph) centric collision with a 1,135 kg (2500 lb) vehicle. This magnitude of guard energy absorption capability is also similar to the amount recommended in several British research papers provided by Advocates.

Several commenters, including consumer interest organizations and trailer manufacturers, stated that the proposed rule would permit overly ''rigid'' or non-yielding guards that would absorb little or no crash energy. The commenters expressed concern that those guards would be too stiff and would result in fatal driver and front vehicle passenger head and chest injuries.

The agency has drafted the energy absorption requirement to address these concerns. NHTSA recognizes the potential trade-off between designs of underride guards that minimize occupant injury criteria responses and those that provide the most protection from PCI. The agency also recognizes that an increase in the level of rigidity from the minimally compliant guard used in the VRTC tests is desirable, but this should not be at the expense of energy absorption. On the other hand, the agency does not want to restrict or dictate guard design by specifying the rigidity of the guard. Therefore, to discourage overly rigid guards, this rule requires that a minimum amount of the energy be absorbed during the energy absorption test from permanent yielding, or plastic deformation, of the guard. After the guard has reached the full 125 mm (5 in) of deformation, the load is reduced and any elastic ''rebound'' of the guard is measured until the load is zero. The elastic component of the energy that is returned by the guard is not included in the calculation of total energy absorbed by the guard. This method gives guard designers flexibility to select guard material properties and frame member spatial configuration.

Some commenters observed that the test procedures proposed in the SNPRM precluded the use of hydraulic energy absorbing guards. Mr. John Tomassoni stated that the 125 mm (5 in) displacement maximum allowed in the strength test would allow only passive structures such as steel struts designed to bend on impact. This is because active energy absorbing struts that are hydraulic (analogous to a vehicle shock absorber) are velocity sensitive. With the slow application of force during the quasi-static test, the hydraulic fluid units would develop almost no resistance. He recommended adding a ''bottoming'' provision to allow static testing after hydraulic systems have reached full stroke.

NHTSA agrees that quasi-static test procedures are inappropriate for hydraulic guards, or any other type of velocity sensitive guard (although NHTSA is unaware of any non-hydraulic guards that are velocity sensitive). A dynamic test would be required to assess their energy-absorbing capabilities by supplying the sudden onset of force their energy absorbing units require to generate resistance. Because the agency does not want to discourage the use of these advanced guard designs by requiring expensive dynamic tests, and because these guards typically have excellent energy absorbing capabilities, the final rule excludes these guards from the energy absorption requirements.

There are also problems with subjecting velocity sensitive guards to the strength requirement. However, complete exclusion of those guards from the performance requirements would be inappropriate. Accordingly, the agency has modified the test procedures to allow velocity sensitive guards to be tested for compliance with the strength requirement. The agency is concerned that, if the hydraulic energy absorbing units do not operate properly, the guard will not generate significant resistance and energy absorption. NHTSA wants to assure that the guard has enough residual strength, even without the energy absorbing units, to meet the same strength requirements as other guards. Therefore, velocity sensitive energy absorbing guards will be tested by slowly compressing the energy absorbing units to the full extent of their designed travel or 610 mm (24 in), whichever occurs first. This will allow the frame of the guard itself to generate resistance, rather than having the piston simply compress the hydraulic shock absorbers.

4. Vertical Cross-sectional Height of Horizontal Cross-member

The SNPRM proposed a minimum vertical cross sectional height of 100 mm (4 in) across the entire width of the guard's horizontal cross-member. Advocates stated in its comment that the guard must be at least 205 mm (8 in), and preferably 305 mm (12 in), high to better manage the loading impact forces and assure full engagement of the vehicle front end. In contrast, the Truck Trailer Manufacturers Association (TTMA) suggested reducing the requirement, urging that the guard be only 50 mm (2 in) high because that is all that is required for adequate strength. It asserted that requiring greater vertical cross section height just adds unnecessary weight and cost to the guards.

NHTSA agrees with Advocates' position that a higher vertical cross section has the potential to better distribute the impact forces, but this does not mean that the proposed 100 mm (4 in) height is insufficient. The 100 mm (4 in) height would be inferior if it sheared or ''cut'' through the front of the striking vehicle, thus allowing forward vehicle motion without much energy absorption due to the low magnitude of

force generated by the guard. A guard should cause the vehicle to absorb energy by crushing, rather than shearing through, frontal vehicle structural components. Shearing through did not occur in the agency's testing with a 100 mm (4 in) high guard horizontal member. None of the crash tests conducted pursuant to this rulemaking resulted in significant shearing of the passenger vehicle's frontal structure (above the 560 mm (22 in) high guard). The crash tests show that the 100 mm (4 in) profile of the guard horizontal member resulted in adequate engagement of the car's front end and is harmonized with the guard specified in ECE Regulation 58. Moreover, a 205 mm (8 in) high profile may require heavier and more expensive guards. Finally, the agency notes that 100 mm (4 in) is only a minimum height, so guard manufacturers are free to manufacture the guards that Advocates recommends. Accordingly, the agency concludes that a higher vertical cross sectional height requirement is unnecessary.

NHTSA also disagrees with TTMA's position that a 50 mm (2 in) vertical cross sectional height would be appropriate. The TTMA did not provide any data to support its assertion that the strength should be adequate. Even if the 50 mm (2 in) height were sufficient for strength purposes, it would have a greater tendency to shear into the front of the passenger vehicle instead of crushing it. This would result in a reduction of energy absorption by the guard and an increase of the striking vehicle damage in low speed crashes of 16 to 24 kph (10 to 15 mph). Accordingly, the agency has decided to retain the 100 mm (4 in) cross sectional vertical height requirement in the final rule.

5. Shape of the Horizontal Cross-member

Some commenters stated that NHTSA should require the guards to have blunted or rounded ends. The Florida Department of Transportation, based on visual evaluations of the installed guard, stated that the requirement that the guard extend to within 100 mm (4 in) of the side of the vehicle would make it a dangerous ''hook'' for adjacent vehicles, especially during sharp turns of the trailer. It suggested requiring a ''U'' shaped guard, similar to one used by some carriers which is attached at either end to the underside or rear of the vehicle. It thought that the ends on these guards could be located further inboard. The TTMA had a similar suggestion, proposing that NHTSA allow (but not require) guards with rounded corners, to lessen the hooking potential when the sliding tandem is positioned forward. The TTMA suggested that the rule be modified to allow such guards to begin curving at a point 255 mm (10 in) inboard of the edges of the vehicle, while retaining the 100 mm (4 in) requirement for straight guards.

NHTSA agrees that there is some potential for hooking the guard on the fenders and wheel wells of adjacent passenger vehicles when the rear end of the trailer swings out laterally during a sharp turn. This phenomenon would be accentuated when the rear wheels on a sliding tandem are positioned forward. The rear wheels are generally positioned forward to give the trailer greater maneuverability, so it is likely that trailers in this configuration will be making sharp turns.

On the other hand, rounded or U-shaped guards would be more expensive to manufacture and would weigh more. Moreover, rounded corners offer very limited potential added value on roadways where sharp turns are infrequent, such as on the interstate highways, which are heavily traveled by trailers. Therefore, while the agency wants to allow guards with rounded ends for operations where they are desired, NHTSA does not think it is necessary or even appropriate to require them.

The commenters referred to rounded guard ends that curve upward, but a rounded end that curves forward could also be useful. It would serve the purpose of making hooking less likely because the guard end would sweep through a smaller arc and present a less pointed profile to adjacent passenger vehicles. Moreover, forward-curving guards could slightly enhance guard effectiveness if a passenger vehicle strikes the trailer in the rear corner at an angle. However, forward-curving guard ends might interfere with the rear wheels if a sliding tandem were moved to the rearmost position.

NHTSA notes that the SNPRM would not prohibit guards with rounded ends, but its configuration requirements would have restricted their curves to a 100 mm (4 in) radius of curvature. To minimize hooking potential and property damage in some applications, the final rule adopts the TTMA's suggestion and allows a guard with rounded ends to begin curving 255 mm (10 in) inboard of the side extremity of the trailer. This will allow a radius of curvature of 150 mm (6 in), or 255 mm (10 in) if the guard end extends all the way to the side extremities. To make the same allowances for forward-curving guards, should guard manufacturers want to produce them, NHTSA is allowing those guards to begin curving forward 255 mm (10 in) inboard of the side extremities, even if the guards are already mounted as far forward as possible—305 mm (12 in) forward of the rear extremity.

6. Guard Attachment

The SNPRM did not specify a particular guard attachment method. To assure an adequate interface between the guard and the trailer, the SNPRM proposed to require that the guard be attached to the trailer chassis in accordance with the instructions provided by the guard manufacturer.

Several commenters thought the SNPRM inadequately addressed the issue of guard attachment and discussed the merits of certain guard designs. Citing a study by Vehicle Safety Consultants (VSC) Ltd., Advocates stated that attaching the horizontal member of the guard to the vehicle with vertical members is not ideal because the guard tends to pivot forward and up if it is struck from the rear by a passenger vehicle and fails. It said that the vertical members then form an inverse ramp, thus aggravating any underride tendency by pushing the passenger vehicle down and the trailer up. To solve this problem, Advocates appears to recommend either guards with diagonal hydraulic struts or the use of hinged, pivoting energy absorbing guards that can fold up for rail or other intermodal transportation. IIHS also believed a diagonal strut would improve guard strength without adding weight and would make it more likely that the guard will move downward as it deforms, thus helping to stop the passenger vehicle.

The agency agrees with IIHS and Advocates that designs employing diagonal struts are strong yet light, but believes it would be inappropriate to require such designs. There is no evidence that only designs with diagonal struts perform adequately. To the contrary, the design used in the VRTC tests did not have diagonal struts and performed acceptably. Diagonal struts may also be impracticable in some cases, due to trailer construction and use.

Likewise, while the pivoting, fold-away design that Advocates recommended has obvious practical advantages in some circumstances, the agency does not believe that there is any necessity for mandating that all guards incorporate that design. Such designs would be unneeded by many trailer operators since most trailers do not travel by ship or train. If trailer operators need fold-away guards for intermodal transportation or other

operational environments, they may specify such guards when ordering new trailers.

NHTSA believes that specifying a particular attachment configuration, as suggested by Advocates and IIHS, would unnecessarily restrict design flexibility on the part of guard manufacturers. Adequate performance may be achieved by a variety of attachment methods. Moreover, it is impracticable for NHTSA to attempt to anticipate all the factors that may go into the choice of attachment method, given the variety of possible guard and trailer configurations. The agency's decision not to specify a particular attachment method leaves the guard manufacturers free to choose an appropriate design.

Some commenters had conflicting impressions that the SNPRM required a particular attachment method. Transamerica Leasing interprets the SNPRM's reference to ''attachment hardware'' as meaning that the proposed rule contemplates only bolt-on guards. It thinks that guards that are welded on should also be allowed. In contrast, Advocates suggested that the SNPRM requires guards with vertical supports for the horizontal member and welded steel construction.

No specific attachment method was proposed in the SNPRM. Nothing in the SNPRM nor in this final rule requires vertical supports or welded construction. Similarly, the agency did not intend its references to attachment hardware in the SNPRM to imply that only bolt-on guards are permitted. The agency's intent was to require that any necessary attachment hardware be included with the guard when a guard manufacturer sells the guard to a trailer manufacturer if the guard manufacturer's method of attachment involves attachment hardware, as in the case of bolt-on guards. Weld-on guards are also permitted. However, if the guard manufacturer's installation instructions do not adequately specify the welding procedures, welds of poor quality could break in NHTSA's compliance testing. Weld strength could probably be assured through incorporating by reference welding industry standard practices.

Some commenters believed that the guard-trailer interface was inadequately addressed by the SNPRM. IIHS noted that the SNPRM proposed no minimum strength for the chassis or the attachment method, and concluded that the attachment may fail before the guard. It stated that NHTSA's static tests showed that the trailer frame rails failed without a doubler plate and that, even with a doubler plate, the flange welds failed in dynamic tests. It also believed that NHTSA should require installation instructions that are specific to each make and model of trailer. IIHS reiterated these comments in a September 16, 1994 letter that pointed to failures of the guard attachment hardware and trailer structures resulting in PCI in two of the VRTC crash tests. IIHS urged NHTSA to either require minimum strength levels for the guard attachment hardware and frame rail or require that the guard be tested together with the type of trailer frame rail to which it would be attached.

Mr. John Tomassoni suggested that the preamble to this rule should encourage manufacturers to install guards with due care so that the attachment is as good as the guard. He said that the trailer frame is the ''weak link'' in crashes today, and that adding ''doubler plates'' to trailer frame members helps to maintain the integrity of the attachment in a crash.

NHTSA's test results show the importance of considering the strength of the attachment point when designing a guard. The agency does not at this time believe that it is necessary to define strength requirements for the chassis or the attachment hardware because the necessary strength is dependent on the design of the guard. For example, a guard that is attached to the rear of the frame rail with two vertical supports (i.e., the commonly used cantilever design used in the VRTC tests and on most trailers) would require a stronger attachment site and attachment hardware than a guard with many attachment points or with diagonal struts. Therefore, without knowing the design of the guard, NHTSA cannot readily specify minimum strengths for the trailer frame or the attachment hardware, as suggested by IIHS.

However, the guard manufacturer must consider frame and hardware strength in order to have a basis for certifying the guard for use on the types of vehicles specified in the installation instructions. NHTSA agrees with Mr. Tomassoni that, if a cantilever design is used, guard manufacturers should consider doubler plates or other appropriate frame reinforcement to prevent frame failure. NHTSA does not want to require such features, however, because a different attachment design or a sturdier trailer frame may eliminate the need for reinforcement. It is not a requirement of this rule that guard manufacturers specify frame strength or reinforcement procedures in the installation instructions. However, as a practical matter, to have a basis for certification, they must consider frame strength using testing, engineering analysis, or both, to be assured that the guard attachment is appropriate for the types of vehicles specified in those instructions.

The VRTC test experience illustrates why guard manufacturers should appropriately design the strength of the attachment. In one case, attachment bolts which were marginally weaker than those used in the quasi-static test sheared under the sudden onset of force in the dynamic test. In another case, the proximity of the guard to the rear edge of the frame rail resulted in tearing of the trailer frame rail webbing. In each case, the guard itself was not really exercised because the attachment failed. In each case, simple modifications solved the problem. The importance of careful attachment hardware material selection and attachment design cannot be overemphasized.

Although guard manufacturers are free to issue separate instructions for each specific make and model of trailer, as IIHS recommends, it is not necessary for NHTSA to require such instructions. An efficient way to specify trailer type would be to list specific make/model combinations. However, as long as the instructions are adequate to identify which vehicles are appropriate for the installation of the guard, specification of the make and model of the trailer may not be necessary. One reasonable alternative for a guard manufacturer with a very adaptable guard design is to show in its instructions the types of trailer, types of chassis configurations, and frame strengths that are necessary to the functioning of that particular guard. For example, the guard manufacturer might specify that any flatbed or van trailer with longitudinal frame rails extending to within 305 mm (12 in) of the rear, spaced between 760 mm and 1,270 mm (30 and 50 in) apart, and with the bottom of the frame rails configured as a horizontal surface at least 100 mm (4 in) wide, composed of steel that is at least 6 mm (1/4 of an inch) thick, would be an appropriate trailer for mounting the guard.

Some commenters believed that defining ''chassis'' as the ''load supporting structure of a motor vehicle'' was too restrictive or otherwise inadequate. NSWMA asked NHTSA to modify S5.3.2 of the vehicle standard to allow vehicle manufacturers with ''unique design considerations'' to attach the underride guard ''to a load supporting structure of the vehicle or body, or through other means that provide equivalent protection.'' It believed that this change is necessary to take into account body designs that do not use a conventional chassis frame.

Mr. John Tomassoni also suggested that NHTSA further define the term ''load supporting structure'' because the longitudinal frame members don't extend all the way to the rear end of some trailers.

Although NSWMA did not provide any specifics on its vehicles, NHTSA agrees that there may be some trailers that do not have adequate chassis structure, in terms of a frame structure, to support a conventionally designed rear impact guard. However, no change to the requirements is necessary. Although the frame components are the obvious attachment point in the case of most trailers, attachment to this chassis member is not required by this rule. In certain cases, an unconventional guard design that is attached to other parts of the chassis may be necessary. In rare cases, custom-designed guards or even extension of the trailer chassis may be necessary to mount the guard.

The TTMA suggested changing the installation requirements in S5.3 to apply to ''guards that are produced or modified and installed by a vehicle manufacturer * * *,'' so that a trailer manufacturer can modify stock guards to fit its particular trailers. It assumes that the guard manufacturer is unlikely to provide installation instructions for the wide variety of trailer configurations. It reasons that, since the trailer manufacturer has to certify that the trailer is in compliance with all Federal motor vehicle safety standards anyway, why not let it modify the guard?

Vehicle manufacturers are allowed to modify purchased guards to suit their own trailers. There may be minor modifications to widely available guard designs that will make them suitable for trailers for which they were not designed. However, if a vehicle manufacturer modifies the guard in a way not contemplated by the instructions provided by the guard manufacturer, that vehicle manufacturer becomes a guard manufacturer. The vehicle manufacturer may no longer rely on the certification of the original guard manufacturer, because the original manufacturer presumably did not intend its guards to be so modified. As a guard manufacturer, the vehicle manufacturer would have to certify that the guard, as modified, complies with the equipment standard. Also, the vehicle manufacturer would have to affix its own certification label and prepare modified installation procedures. The installation procedures are necessary both to ensure that the guards are modified and installed the same way each time, and to allow NHTSA to duplicate the modification when conducting compliance testing.

The original guard manufacturer's installation instructions may provide for some flexibility in the installation. For example, they may specify that a certain kind of spacer may be used to achieve a proper fit, or that a doubler plate be installed if the thickness of the chassis is below a certain amount. However, NHTSA may employ any of the installation options provided to the vehicle manufacturer when subjecting a guard to compliance testing. Any test failure of a properly installed guard will represent noncompliance by the guard manufacturer.

7. Compliance Test Requirements and Procedures

a. Dynamic Versus Static Testing. Several commenters, including Advocates, urged that NHTSA require that the guards be tested dynamically, that is, by crashing cars into the rear of trailers equipped with the rear impact guard. The agency agrees that dynamic testing more closely simulates the conditions in which underride crashes occur in the real world than the quasi-static testing does. However, dynamic testing is also far more expensive. To test one guard/trailer combination with a dynamic test for strength and energy absorption would entail total test costs of approximately $30,000.

Dynamic tests would be so expensive that specifying such testing of trailers could raise practicability concerns regarding those trailer manufacturers that are small businesses. A requirement based on such tests would place these small manufacturers, which are numerous, at a competitive disadvantage, relative to larger companies, and would represent a significant financial burden.

Quasi-static tests provide similar information far more economically than dynamic tests. The VRTC research project demonstrated that quasi-static testing generates similar forces to those generated in an actual crash test, albeit at a slower rate. The project also demonstrated that guards only ten percent stronger than the minimum level of strength necessary to pass quasi-static test requirements performed adequately in dynamic tests. The quasi-static compliance test for a single guard at VRTC cost only about $3,500. Based on the foregoing and the discussion in the section above on separate equipment and vehicle standards, the agency believes that dynamic testing of underride guards is unnecessary and overly expensive. NHTSA further believes that quasi-static testing is adequate to ensure the manufacture of safe and effective rear impact guards and that it will do so at a far lower cost. Therefore, the quasi-static testing procedure has been retained in the final rule.

Some commenters commented on the definition of ''rigid test fixture.'' The TTMA assumes that a trailer can be used as a rigid test fixture, and other commenters urged that testing be permitted on trailers. The Institute for Injury Reduction commented that the terms ''sufficiently large,'' ''appropriately configured,'' and ''no significant amount of energy'' in the definition of rigid test fixture are vague, imprecise, ambiguous and in no way ''stated in objective terms.''

NHTSA notes that a trailer may meet the equipment standard's definition of a rigid test fixture, but because of slight flexing of the vehicle structure, in other cases, they may not meet this definition. NHTSA is persuaded that the benefits of testing on trailers outweigh the possible effect on testing repeatability and does not want to discourage testing on trailers by conducting its compliance testing only on a rigid test fixture. The TTMA comment indicates that, although it is not required, some vehicle manufacturers will conduct quasi-static guard testing on trailers or trailer portions. NHTSA sees no reason why this should not serve as a basis for manufacturer certification even if the trailer is not a rigid test fixture. The use of a trailer would be desirable because there is nothing more ''appropriately configured'' for guard mounting than the actual trailer the guard will be installed on and because the structural integrity of the trailer chassis will also be tested. However, caution must be exercised to assure that the trailer is secured so that it does not move during the test. If the guard is mounted to a trailer, the trailer chassis will be secured so that there is no rotation or translation of the trailer tires during the tests for guard strength and energy absorption.

When conducting compliance testing, the agency will give the guard manufacturer the option of designating testing on a rigid test fixture or on a trailer. NHTSA notes that it may test on any trailer described as appropriate in the guard manufacturer's installation instructions, even if the guard manufacturer based its certification for that trailer not on actual testing but on engineering analysis.

NHTSA agrees with the Institute for Injury Reduction that the definition of ''rigid test fixture'' needs a slight modification. The reference to size has been eliminated because size is not really as important as rigidity. However, it is not necessary to define the amount

of energy the fixture can absorb, because, like the ''fixed collision barrier'' defined in 49 CFR 571.3, the guards will be expected to pass the test no matter how little energy is absorbed by the fixture. Also, the term ''appropriately configured'' has been clarified. There is no way to precisely define how the test fixture will have to be configured because that will depend on the design of the guard being tested. There may be a number of appropriate configurations. As long as the guard can be attached to the test fixture in the same way that the guard manufacturer's instructions specifies the guard is to be attached to the vehicle, without either modifying the guard or adding adaptive parts to obtain a better fit between the guard and the fixture in a way that is inconsistent with the instructions, the test fixture is appropriately configured.

The agency had modified the strength test procedures to promote ease of testing. Paragraph (b) of S6.5 now requires the application of the force to the loading device to achieve a constant deflection rate, rather than a constant increase in force, as proposed in the SNPRM. In other words, rather than increasing the force at a constant rate, the deflection rate is required to be held constant and the force will vary depending on the resistance offered by the guard. Specification of a deflection rate procedure is consistent with existing agency practice. For example, the quasi-static compliance tests in S4(d)–(e) of Standard No. 214, *Side Impact Protection* and S6.3 of Standard No. 216, *Roof Crush Resistance* utilize this technique for force application.

b. Test Sites. Several commenters recommended changes in the language ′specifying the test sites to be used during the compliance tests. Mr. John Tomassoni recommended defining the P1 test site such that the ''3/8 L'' lateral dimension (see Figure 1) is defined relative to the side extremities of the trailer, as opposed to the center of the guard. He suggested that this change would account for newer 2,600 mm (102 in) wide trailers which have a 1,270 mm (50 in) longitudinal frame rail span, or for any other width trailer. This approach, however, is inconsistent with a separate equipment standard because the exact width of the trailer may not be known at the time of testing. Moreover, the requirement that guards extend to within 100 mm (4 in) of the side of the trailer should assure that the P1 site will be sufficiently outboard on the trailer, because wider guards will be required for wider trailers, and the P1 location is dependent upon guard width.

Mr. Tomassoni also suggested that S5.2.2 and Figure 1 should be modified to specify that the vertical center of force should not be more than 560 mm (22 in) from the ground, rather than at ''the horizontal plane that passes through the vertical center of the horizontal member,'' as proposed in the SNPRM. Mr. Tomassoni indicates that a guard with a horizontal member of cross sectional vertical height greater than 100 mm (4 in) would result in higher test points. Higher test points would yield test results that are not indicative of the guard's effective impact strength near the bottom edge, where force is likely to be concentrated in real world crashes. Although it is not possible to define the test points relative to the ground because the guard is not required to be mounted on the vehicle during testing, NHTSA has modified the rule to define the test points relative to the bottom of the guard itself. This should assure adequate strength and energy absorption at the level of likely impact force.

Mr. John Kourik pointed out that the P1 test site was defined incorrectly in the SNPRM, although it was correctly portrayed in Figure 1. The text of S5.2.2(a) (redesignated S6.4(a) in this rule) read ''3/8 of the transverse horizontal distance * * * between the * * * vertical centerline of the guard [and] the outermost edge * * * of the guard.'' The P1 definition has been corrected to reflect that the point is located 3/8 of the total guard width outboard of the centerline. Mr. Kourik also suggested that the four asterisks showing the P3 test sites in Figure 1 be reduced to two asterisks. NHTSA has modified the figure to make it clearer that there is only one P3 test site on each side of the guard, but that the location of the site is within a range from the centerline.

The TTMA and other commenters suggested broadening the range of locations of the P3 test site to allow it to be ''any point selected by the manufacturer * * * between 14 and 25 [rather than 20] inches outboard'' of the guard centerline. Most new trailers are wider than in the past with a frame rail span of 127 cm (50 in), and the frame rail is a likely chassis structure for guard attachment. TTMA wanted NHTSA to conduct the more demanding 100 kN (22,480 lb) P3 test near the attachment point of the guard's supports. This was NHTSA's general objective in specifying the P3 test location, and this objective is furthered by accommodating TTMA's request in part. The rule has been modified to provide that P3 is located 355 to 635 mm (14 to 25 in) from the guard centerline. However, NHTSA will select any point within the range for compliance testing, rather than permit a manufacturer to specify a single test site within the 355 to 635 mm (14 to 25 in) range.

c. Labeling and Certification. The TTMA suggested that affixing a certification label is redundant in those instances in which the guard is manufactured by the vehicle manufacturer because the vehicle manufacturer has to certify compliance with all the safety standards anyway. Although this is true, allowing some guard manufacturers to omit the label would be impractical from an enforcement standpoint, because vehicle inspectors would not be able to tell whether the guard was certified by the guard/vehicle manufacturer as part of the vehicle or whether the vehicle manufacturer installed a guard purchased from a guard manufacturer who neglected to make a required certification. Moreover, NHTSA does not believe that affixing the label is a significant burden. Therefore, the final rule retains the requirement of a separate guard certification for all guards.

The TTMA also recommended that the label be affixed to the roadside vertical supporting member of the guard, instead of the center of the horizontal guard member, to prevent damage and abuse. NHTSA believes that docking and other routine operations could damage the label if affixed in the proposed location. Therefore, the rule has been modified to require the label to be affixed in a less vulnerable location. The rule now requires the certification label to be placed on the forwardmost surface of the horizontal member of the guard at an offset location 305 mm (12 in) inboard of the right side end of the guard.

The TTMA also suggested changes in the label format. Specifically, it recommended that the letters and numbers should be 2.5 mm (3⁄32 of an inch) high, which is the same as the trailer certification label, rather than 13 mm (½ inch) high as proposed in the SNPRM. TTMA also asked that NHTSA require that the label be furnished to the vehicle manufacturer with a protective cover that can be removed after painting.

The agency believes that the smaller letters suggested by TTMA are sufficiently legible for inspection purposes, and has changed the rule to adopt this suggestion. However, market forces should determine whether protective covers are provided. Vehicle manufacturers will probably cover the labels themselves when painting to avoid having their guard confused with a noncomplying guard.

C. Standard for Vehicles

1. Configuration Issues

a. Maximum Guard Ground Clearance. One of the major issues addressed by nearly all the commenters was the maximum ground clearance of the horizontal member of the rear impact guard. The SNPRM proposed a maximum guard height of 560 mm (22 in). Consumer safety groups and private citizens generally favored lowering the guard to within 405 or 460 mm (16 or 18 in) of the ground in the belief that doing so would provide more complete protection for low profile vehicles such as sub-compact and mini-compact passenger cars. Since the real issue is not ground clearance, but guard height relative to the front structure of colliding passenger vehicles, some of these commenters addressed related issues such as the height of the engine block, hood, and cowl (windshield base) of those vehicles. Except for the consumer safety groups and a few private citizens, few provided a rationale or any data to support a lower guard height. The organizations and private companies related to the trucking industry generally supported a 560 mm (22 in) height, but offered a variety of reasons not to lower the guard further. Most of their concerns related to operational difficulties that would be caused by lower guard heights.

The consumer safety groups focussed their comments on guard effectiveness. Advocates advanced several reasons for reducing the guard height in order to achieve better engagement between the guard and the engine block, bumper, and tires of colliding passenger vehicles. Advocates stated that lower engine block heights on modern automobiles, combined with the lowering of the passenger vehicle's front end due to suspension compression during severe braking, will result in the rear impact guard passing over the engine and engaging only the hood and fenders of most cars. In addition to the front end lowering caused by braking, Advocates claim that additional frontal lowering will occur on downgrades due to forward weight transfer. Citing a random survey it made of subcompact cars and urging NHTSA to conduct a more thorough survey, it said that no engine block is higher than 560 mm (22 in) above the ground and bumpers are in the 430 to 535 mm (17 to 21 in) range. It stated that earlier NHTSA data using the average hood height above the ground was misleading because its ''casual'' survey of subcompact hood front edges showed none higher than 635 mm (25 in). It interprets these data to mean that only fender top and hood sheet metal would be engaged, and concluded that air bag sensors probably will not be triggered. Advocates also maintains that, even if the top of the engine were engaged, the underride guard will cause the blocks of transversely-mounted engines used in most subcompacts to rotate (roll) rearward, crushing the car occupant's legs. Based on British research, Advocates recommends a guard height of no more than 405 mm (16 in), and ideally 305 mm (12 in). Both Advocates and Mr. Byron Bloch, of Auto Safety Design, cited the 1980 study by Dynamic Science which concluded that the guard height should not exceed 510 mm (20 in). Mr. Bloch recommended a height of 405 to 460 mm (16 to 18 in). CRASH solicited many private citizens to send in petitions, letters, and pre-printed cards stating that the guard height should be set at 405 mm (16 in), but none provided supporting technical information.

The IIHS, citing the same studies as Advocates, urged NHTSA to adopt a maximum ground clearance of 460 mm (18 in). IIHS is primarily concerned that a 560 mm (22 in) high guard will override car bumpers, thus bypassing much of the potential front end energy absorption. Other concerns expressed by IIHS were late air bag activation, braking-induced bumper depression of two to 100 mm (4 in) or more, and possible lifting of the rear end of the trailer as the car wedges under the guard. IIHS implied that a 460 mm (18 in) requirement is practical, noting that one U.S. freight carrier reportedly sets its guards at 495 mm (19.5 in).

IIHS believes NHTSA's estimate that trailers probably sit 50 to 75 mm (2 to 3 in) lower when loaded is wrong. IIHS tests on 11 trailers showed the most heavily loaded trailers showed only 38 to 57 mm (1.5 to 2.25 in) of depression with an average of 28 mm (1.1 in). Four of the trailers even raised in the rear, indicating that load distribution is probably a factor in determining rear extremity compression height. IIHS believes that modern air suspensions compensate for loading depression. Even if loaded trailers are depressed, it believes that passenger vehicles should be protected from partially loaded or empty trailers, which it says are involved in 29 percent of fatal crashes. Therefore, IIHS urges NHTSA to assume no depression of the trailer bed due to loading.

Mr. John Tomassoni commented that a lower guard would be better because engine block resistance to a rigid guard doesn't start until 460 to 610 mm (18 to 24 in) behind the bumper. However, Mr. Tomassoni concluded that a 560 mm (22 in) requirement is a significant improvement over the existing 760 mm (30 in) height, and one that can be implemented with little or no difficulty. He notes that trailers 16 meters (m) (53 feet (ft)) or longer are currently being equipped with 560 mm (22 in) high guards.

Some municipalities sent comments in favor of lower guard heights. For example, the City of Durham, North Carolina sent an unsigned resolution that the height be set at no more than 460 mm (18 in). Its Transportation Advisory Committee submitted a similar comment. About 2,300 private citizens recommended a guard height of 405 mm (16 in).

The industry groups focussed their comments relating to guard height on operational restrictions that would result from the reduced ''angle of departure'' that lower ground clearance would cause. The angle of departure is basically the acute angle formed by the ground and a line connecting the point where the rear tires meet the ground with the bottom of the guard. The lower the guard, and the further forward the rear wheels are positioned relative to the guard, the smaller the departure angle is, and therefore the more likely the guard is to scrape or ''hang'' on the ground when the trailer mounts a steep incline. The problem is exacerbated for the longer 16 m (53 ft) trailers being used today, because they have correspondingly greater rear overhangs, and thus smaller departure angles. Many trailers have their rear wheels mounted on sliding tandems, or bogeys, that can be moved forward or rearward on the trailer's frame, depending on the load and the need for maneuverability. The further forward the wheels are, the more maneuverable the trailer is and the more the rear end of the trailer ''swings out'' in turns.

Changes in the industry since 1981 seem to have relieved the concerns of the rail industry that the proposed ground clearance of 560 mm (22 in) would interfere with rail car loading and unloading operations, in which trailers are driven up steep ''circus ramps'' onto flat cars. The Association of American Railroads (AAR) and TTX Company, a trailer-on-flat-car operator, opposed the 1981 NPRM, but now support the 560 mm (22 in) requirement because there are few ''circus'' ramps still operating. However, they caution that a significantly lower height would interfere with intermodal flatcar operations. TTX asserted that such a reduction in guard clearance could interfere with lift-on and lift-off operations for one type of railroad car (TTAX ''spin cars'') handling 16 m (53

ft) trailers. It added that there must be extra guard clearance to account for loading depression and bouncing. To illustrate the potential economic impact of lower guard clearance, TTX stated that there are 2,300 such cars costing $340 million, which are only 1.8 years old on average. TTX estimates that lowering the guard clearance could eliminate 75 percent of the capacity for 14 railroads.

In contrast, the 560 mm (22 in) guard height is still considered low by the portion of the industry that transports trailers in ships. Transamerica Leasing, Inc. recommends that NHTSA conduct further study before issuing this rule because a 560 mm (22 in) high guard would scrape loading ramps during roll-on/roll-off ship loading when the wheels are positioned forward to provide the maneuverability necessary in ships. The American Trucking Associations (ATA) supports the 560 mm (22 in) proposed ground clearance, but stated that any lower clearance would be unacceptable. It calculates that a loaded trailer driven onto a barge or vessel, which it says have departure angles as high as 15 degrees, would drag the guard if the rear axle is 190 cm (74.5 in) or more forward of the guard. It said that many states have restrictions on trailer kingpin-to-rear- axle distances that result in a 245 to 275 cm (96 to 108 in) rear-wheel-to-guard distance on 16 m (53 ft) trailers. It concludes that these trailers' guards would hang on such vessel loading ramps or on any 20 percent grade. It finds the 560 mm (22 in) clearance acceptable only because 16 m (53 ft) trailers are rarely used on vessels, and because 20 percent grades are rare. The Truck Maintenance Council of the ATA recommends a guard clearance of 560 mm (22 in) for general freight equipment. According to Mr. Robert Crail, a trailer designer and manufacturer, the proposed 560 mm (22 in) height is acceptable because, although many trailers are still driven into ships rather than being crane loaded, vessel owners can adjust their ramps, and because it is compatible with the dimensions established by the trucking industry and loading dock restraint device manufacturers. Ford Motor Company had no specific data, but is concerned that 560 mm (22 in) may be inadequate ground clearance for loading and unloading of long trailers in trains or ships. Ford also noted that some single unit trucks are equipped with kneel-down air suspensions to facilitate loading and unloading, which Ford says are incompatible with a 560 mm (22 in) high guard.

Even outside the context of intermodal loading and unloading operations, some commenters were concerned about the reduced departure angle that a 560 mm (22 in) high guard would create. The National Solid Waste Management Association (NSWMA) emphasized the importance of maneuverability for sanitation trucks in negotiating driveways and backing into tight places. It estimated that a 560 mm (22 in) guard mounted flush with the rear extremity of a sanitation truck would have a departure angle of only 9 degrees, which it says is typical of many driveway entrances. Although it appears that many of the trucks NSWMA is concerned with are single unit trucks that are excluded from the rule, NSWMA is also concerned about the guards getting hung up on the ground when the trailers are taken off-road onto the soft, unpaved, uneven roads at landfills and construction sites.

One additional industry concern is engagement of the guard with ''dock locks.'' When trailers back up to loading docks, these devices engage the underride guard to keep the trailer from moving away from the loading docks as forklifts repeatedly travel across the rear door sill. Transamerica Leasing believes that the 560 mm (22 in) high guards may interfere with ''dock lock'' engagement arms. Yellow Freight System states that thousands of dock locks have been installed according to the 560 mm (22 in) guard height recommended by the Maintenance Council of the ATA, and urges NHTSA not to change now. However, Rite Hite Corporation, a manufacturer of dock locks, submitted information indicating that dock locks can accommodate guard heights between 355 and 760 mm (14 and 30 in).

One industry group endorsed a lower guard height. The AFL-CIO Teamsters Union suggested that NHTSA could require a ground clearance lower than 560 mm (22 in) because auto carriers and UPS trailer fleets have reported no problems with lower guard heights. It also observed that 16 m (53 ft) trailers in many states have no problem using 560 mm (22 in) guards.

The question of proper guard ground clearance involves a balancing of the effectiveness of the guard in providing protection against PCI against the cost and operational restrictions that lower guard heights could impose on the industry.

The effectiveness of the guards is a primary consideration. Regarding Advocates' survey of bumper and hood heights on compact and subcompact cars, NHTSA conducted a similar survey of engine block height and front end profile of a sample of 40 vehicles. The results of this survey were summarized in the agency's Truck Underride Report to Congress, dated November, 1993. The NHTSA survey showed that the height of the top of the engine block was between 660 and 790 mm (26 and 31 in), with an average height of 840 mm (28 in). The hood leading edge in NHTSA's survey averaged about 685 mm (27 in) and the lower edge of the windshield frame averaged about 840 mm (33 in). The agency is not aware of the basis upon which Advocates selected the cars for its survey, but NHTSA's survey was targeted preferentially at cars with the lowest front end profile. Since NHTSA's average heights were higher than those obtained by Advocates, NHTSA has no explanation for the discrepancy, unless the survey methodologies were different. Hood heights have been getting lower over the past few years, but that trend may have stopped in the last two years. NHTSA believes that the average hood heights in its survey are representative of the anticipated dimensions for new passenger vehicles 5 to 10 years in the future. NHTSA concludes from the VRTC test results that a 255 to 305 mm (10 to 12 in) overlap between the guard bottom and the lower edge of the windshield will ensure adequate structural engagement with the guard for the vast majority of compact and subcompact cars.

NHTSA agrees with IIHS that a guard 560 mm (22 in) high will override most bumpers, but disagrees that bypassing the bumper sacrifices much of the potential front end energy absorption capability. The bumper is designed to prevent cosmetic damage in low speed crashes (less than 16 kph, or 10 mph) and provides only a small portion of the energy absorption by a car crashing at higher speeds. The bumper is mounted to the frontal crash energy management components which extend rearward and upward to the rearmost section of the engine compartment. These components will be adequately engaged by the rear impact guard during a collision. Regarding IIHS's contention that NHTSA should assume no loading-induced depression of the trailer bed, NHTSA has not made such an assumption. The final rule regulates the guard height only when the trailers are unloaded, and the 560 mm (22 in) guard height was adequate in NHTSA's VRTC tests.

The agency conducted seven full scale crash tests with the proposed guard in the course of the recent research project, using two types of subcompact and two types of compact cars. These vehicles were representative of average hood and engine heights for cars in those size classes. The minimally compliant rear

impact guard was set 560 mm (22 in) above the ground. During these tests, the cars had their front ends depressed to simulate the lowering that would be experienced during heavy braking, but the guard was not depressed to a level below the minimum clearance, as it might be if the trailer were loaded. In some sense, therefore, these tests represented a ''worst case scenario'' with regard to guard height. In each test, the air bags were fully deployed before dummy contact and the deceleration readings were much better than the minimum requirements in Standard No. 208, *Occupant Crash Protection*. When there was no guard attachment failure, they adequately engaged the structure of each car and prevented PCI. There was little movement of the engine and no contact between the engine and fire wall. The transversely mounted engines did not rotate substantially, and none of the dummies legs were crushed. Therefore, based on the docket comments, the recently completed crash tests, and the assessment of late model passenger vehicle frontal structure characteristics, NHTSA concludes that the 560 mm (22 in) maximum guard ground clearance is adequate to engage the frontal crash energy management structure of most subcompact and compact cars.

Although some small sectors of the industry may be affected, NHTSA does not believe that there will be any insurmountable problems with a 560 mm (22 in) guard height. Several states have required 560 mm (22 in) maximum guard ground clearances in conjunction with the passage of laws allowing 16 m (53 ft) trailers. NHTSA contacted several distributorships/dealerships that sell heavy trailers in excess of 15 m (50 ft) in length to the trucking industry and was unable to obtain information documenting substantial operational problems due to guard ground clearances of 560 mm (22 in) or less. The AFL-CIO Teamsters Union did not give NHTSA enough information about the operating environment of Carolina Freight Carriers Corporation, the trucking company that sets its guards at 495 mm (19.5 in), to determine why they have not experienced the problems that the other commenters expect with guards lower than 560 mm (22 in).

NHTSA does not believe that the number of trailers involved in ship roll-on/roll-off and trailer-on-flat-car circus ramp operations is significant. TTMA data indicate that less than 5 percent of trailers in the U.S. are ever transported by ship or barge, and that between one and less than ten percent of new trailers are produced for trailer-on-flat-car use. Modifications of may solve these problems. Most of the vehicles in the waste services fleet mentioned by NSWMA are single unit trucks excluded from the rule. However, in those few cases where there are still problems, movable or adjustable guards may be needed.

There is adequate evidence in the comments to conclude that requiring a guard height lower than 560 mm (22 in) would cause an undue burden on the industry. Of particular concern are the comments of ATA, TTX, AAR, and Transamerica Leasing, indicating that any height below 560 mm (22 in) will cause interference in intermodal operations. Moreover, a lower height will increase the probability that the guard will scrape or snag during normal vehicle operations and be damaged as a result. Therefore, because the 560 mm (22 in) maximum ground clearance proposed in the SNPRM appears to be the lowest height that provides adequate effectiveness without imposing an undue burden, it has been retained in the final rule. The agency notes that guards may be mounted with less than the maximum allowable ground clearance.

b. Guard Width. The SNPRM proposed that the horizontal member of the guard be required to extend across the width of the trailer to within 100 mm (4 in) of the side extremities, but not outboard of the side extremities. Advocates commented that the 100 mm (4 in) allowance appeared arbitrary, based on the rulemaking record, but did not actually suggest that the guard should extend fully to the side extremities of the trailer. The AFL–CIO Teamsters Union indicated that it fully supports the SNPRM's 100 mm (4 in) allowance, while noting much anecdotal information from drivers about the importance of a ''full width'' guard, especially for crashes that occur at an angle to the rear of the trailer.

NHTSA notes that there is no requirement of a 100 mm (4 in) inset. Vehicle manufacturers are permitted to install guards extending the full width of the trailer. However, the 100 mm (4 in) allowance gives trailer and guard manufacturers some flexibility in choosing and providing guards, without sacrificing safety or effectiveness. From the perspective of guard effectiveness, it is doubtful that the extra lateral coverage would significantly increase the strength of the guard at its extremities or its ability to protect passengers in an offset collision.

In fact, a 100 mm (4 in) inset would decrease the previously mentioned ''hooking'' potential during sharp turns of the trailer and provide more clearance in certain passing situations. The Florida Department of Transportation and the TTMA recommended allowing rounded guard ends to alleviate this potential problem, but NHTSA notes that a 100 mm (4 in) inset on an unrounded guard will partially accomplish the same goal. As discussed above in the section on shape of the horizontal cross member, pursuant to the TTMA's suggestion NHTSA has modified the rule to allow rounded corners on guards to begin curving at a point 255 mm (10 in) inboard of the edges of the vehicle, while retaining the 100 mm (4 in) requirement for straight guards. Curved guards still have to meet the other requirements of the vehicle standard (i.e., extend to within 100 mm, or 4 in, of the side extremity). This modification merely removes for the curved portion of the guard the requirement that the bottom of the horizontal member be within 560 mm (22 in) of the ground, in the case of upward curving guards, and the requirement that the rear surface of the horizontal member be within 305 mm (12 in) of the vehicle rear extremity, in the case of forward curving guards.

c. *Specification of the Rear Extremity.* Some commenters requested that NHTSA modify the proposed definition of ''rear extremity'' to take into account vehicles with high protrusions in the rear. The SNPRM defined the rear extremity as the rearmost point of the vehicle that is located 560 mm (22 in) or more above the ground. The specification of the rear extremity is important because the SNPRM also requires that the rear impact guard be located no more than 305 mm (12 in) forward of the rear extremity of the vehicle. Some trailers and semitrailers, such as hopper trailers with V-shaped bins and trailers with liftgates or refrigerator units in the upper rear, are shaped such that the rear extremity of the vehicle is located well above the road surface. These protrusions do not present a danger of PCI because they are located well above the roof line of most passenger vehicles. Yet, applying the rear extremity definition in the SNPRM, a rear impact guard would have to be mounted such that it extends rearward from the base of the trailer to a position within 305 mm (12 in) of the back of the high protrusion. Such an extended guard might pose a safety hazard as well as operational difficulties.

Several manufacturers of vehicles with high rear end overhang recommended alternative definitions of ''rear extremity'' that excluded portions of the trailer rear that were high enough to clear the roofs of passenger vehicles. The TTMA and the ATA recommended that vehicle structure with a ground

clearance of 1,680 mm (66 in) or more be excluded from the definition of rear extremity. NSWMA recommended excluding that portion of the rear of the vehicle located 1,520 mm (60 in) or more above the ground.

The agency acknowledges the potential problem with the proposed specifications and believes that redefining the rear extremity to accommodate these vehicles is possible without reducing rear impact guard effectiveness or creating new safety hazards. NHTSA contacted officials from TTMA and ATA to obtain more information about the current number and future production plans for vehicles of this type. According to TTMA, these are mostly highly specialized vehicles and the high overhang often consists of equipment such as cranes in addition to ''bubble door'' type container trailers. TTMA estimates that these vehicles constitute less than one percent of the annual trailer and semitrailer production and there is no trend toward increasing the numbers substantially. ATA also estimated that the number of vehicles produced annually with high rear overhanging structure represents less than 5 percent of the total annual production of trailers and semitrailers. ATA did not provide information on the future trend of production of these vehicles, but indicated that the number has been fairly constant in the recent past with new vehicles brought into service primarily to replace vehicles going out of service.

The NSWMA recommended that the rule specifically state that, for roll-off/hoist type trailers, the containers on the hoist frame be considered as part of the load and not as part of the vehicle for purposes of rear extremity specification. It suggests that the rearmost part of the hoist frame should be considered the rear extremity. Containers extend up to 1.5 m (5 ft) rearward from the end of the hoist frame.

The agency has decided to revise the SNPRM's definition of ''rear extremity'' to limit its ambit to the portion of the vehicle's rear located between a lower and upper height limit. The lower limit specification remains unchanged at 560 mm (22 in) (that is, guard ground clearance). An upper limit for the area in which the rear extremity is located has been specified at 1,900 mm (75 in) above the ground surface for purposes of the vehicle standard. The portion of the rear of the trailer that is located in the same horizontal planes as a passenger vehicle windshield is the critical area for rear underride protection. This is between 760 mm and 1,900 mm (30 and 75 in) above the ground for almost all passenger cars, vans, and light trucks.

With regard to roll-on/hoist type trailers, the agency agrees with NSWMA that there would be numerous regulatory problems involved in considering the containers to be part of the vehicle, rather than part of the load. Although the containers may extend beyond the end of the vehicle and are capable of causing PCI just like the rear end of a trailer, they are not part of a new vehicle as manufactured. Further, the boxes, tanks, and other specialty containers are manufactured, maintained, and in many cases owned separately from the vehicle. NHTSA has no authority to regulate vehicle loads under 49 U.S.C. Chapter 301.

While NHTSA cannot require guards on the container on roll-on/hoist type trailers, it can require guards on the rear of the trailer that carries it. If the vehicle is designed to carry containers that do not extend appreciably beyond the rear of the vehicles, the agency sees no basis for excluding it. Casual observations indicate that the containers do not usually extend beyond the rear of the vehicle, so these trailers are required to have guards. The rear extremity will be determined without the container.

d. *Distance between the Guard Rear Surface and the Vehicle Rear Extremity.* Several commenters urged NHTSA to change the requirement proposed in the SNPRM that the guard's horizontal member be mounted not more than 305 mm (12 in) forward of the rear extremity of the trailer and not rearward of the rear extremity. The distance between the guard and the trailer rear extremity is significant because the sooner the passenger vehicle engages the underride guard, the farther its occupant compartment will be from the rear of the trailer when the guard is engaged, and the better the chance that the passenger vehicle will stop short of PCI.

Some commenters thought that NHTSA should allow the guard's horizontal member to extend rearward of the rear extremity. Mr. John Tomassoni stated that he saw no good safety reason for restricting rear extension, since it is beneficial for preventing PCI. The TTMA also saw no reason why the guard should not be located rearward of the rear extremity. It also suggested a change in the language of S5.1.3 that makes it clear that, even above 560 mm (22 in) the guard cannot be more than 305 mm (12 in) from the rear extremity of the vehicle.

The Rite Hite Corporation stated that, for dock locks to function, there must be no more than 230 mm (9 in) between the rear extremity and the guard. It is concerned that the 305 mm (12 in) allowance will render the dock locks useless.

NHTSA notes that the 305 mm (12 in) allowance is not a minimum, but a maximum requirement. Casual observations by the agency indicate that nearly all trailers currently have their guards mounted flush with the rear extremity of the trailers. This practice is also specified as the recommended practice in the ATA Maintenance Council guidance (RP 707). It is also the configuration most compatible with dock locking mechanisms. Based upon the TTMA's comment relating to mounting rearward of the rear extremity, the industry appears to be in favor of mounting as far rearward as possible. Therefore, NHTSA believes that trailer manufacturers will continue to mount guards flush with the rear extremity of the vehicle.

The main incentive to change the prevailing practice relates to the smaller departure angle that will be created by lowering the maximum guard ground clearance from 760 mm to 560 mm (30 to 22 in). Moving the guard 305 mm (12 in) forward will slightly increase the departure angle. However, nothing in this rule increases that existing incentive. Therefore, the agency does not expect that a 305 mm (12 in) allowance would have any effect on prevailing practice. Further, NHTSA does not believe the benefit of moving the guard forward would be very significant. Nevertheless, the agency had modified the requirement in section 5.1.3. for guard rear surface location, or off-set, to state that the guard should be mounted as close as practical to the rear extremity of the vehicle. This will prevent vehicle manufacturers from mounting the guard with up to 305 mm (12 in) of forward off-set from the rear extremity of the vehicle unless the off-set is necessary and not merely convenient. It should be noted that the requirement to mount the guard as close to the rear extremity as practical is identical to the requirements of ECE Regulation 58.

NHTSA agrees that having the horizontal member of the guard positioned rearward of the rear extremity would be beneficial for preventing PCI in the event of a crash. Some meritorious guard designs, such as the Quinton-Hazel hydraulic energy absorbing guard and the Hope rearguard underrun device, utilize horizontal members that are hinged so that they are angled down and slightly rearward from the rear of the trailer. This rearward positioning enables the guard to engage a striking vehicle at a greater distance from the rear extremity and gives the guard a greater distance to swing

forward and ''ride down'' the energy of the striking vehicle before PCI occurs. If vehicle manufacturers want to provide this extra measure of safety, this agency will not discourage it, as long as vehicle manufacturers consider State laws governing overall combination truck length. However, NHTSA does not want to require rearward positioning because this configuration exacerbates the previously mentioned potential for ''hooking'' adjacent vehicles during sharp trailer turns and in other situations. Therefore, NHTSA has removed the SNPRM's prohibition on positioning the horizontal member rearward of the rear extremity. The new requirement that the member be as close to the rear extremity as practical is limited so that it does not prohibit mounting rearward of the rear extremity.

Advocates stated that NHTSA has no data to support the 305 mm (12 in) allowance because all crash tests were done with guards positioned at the very rear of the trailer, thus implying that testing in the forward-mounted position is required to support the allowance.

Even though the crash tests conducted by NHTSA had the rear impact guards mounted in the usual position, flush with the rear of the trailer, NHTSA has used a simple mathematical calculation to determine whether, and to what extent, PCI would have occurred if the guard had been mounted 305 mm (12 in) forward of the rear extremity (see VRTC report ''Heavy Truck Rear Underride Protection,'' June, 1993. DOT–HS–808–081). The agency assumed that if the guard had been mounted 305 mm (12 in) farther forward, the car's occupant compartment would have come to a rest 305 mm (12 in) closer to the rear of the trailer after the crash. There is no reason to expect that the guards would have performed more poorly if mounted further forward in the 305 mm (12 in) zone at the rear of the trailer. Therefore, there is no need, as Advocates suggests, to mount the guards at the ''worst case'' forwardmost point for testing purposes. In any case, the new requirement to mount the guards as close to the rear extremity as possible minimizes the number of trailers with guards mounted forward of the rear extremity.

Mr. Byron Bloch recommended that the guard should be located no more than 150 mm (6 in) forward of the rear extremity instead of 305 mm (12 in). He said that the 150 mm (6 in) gained could be used to make the guard more effective, by permitting the guard to absorb more energy by utilizing a 255 mm (10 in) stroke rather than the proposed 125 mm (5 in) stroke. He stated that this would allow the manufacturers greater flexibility in choosing an energy absorbing type of guard.

While it might be desirable to have guards that absorb an equivalent amount of energy over a greater distance, Mr. Bloch's suggestion could make PCI more likely. NHTSA does not want to reduce the vehicle manufacturer's flexibility to offset the guard up to 305 mm (12 in) forward of the rear of the trailer. If the agency permitted a greater stroke for guards designed to be mounted closer to the rear extremity, it would be difficult to control where these guards are actually mounted. If mounted too far forward within the permitted offset, they would allow excessive penetration under the trailer. NHTSA is also concerned that guards with a greater amount of stroke will pivot at the vehicle chassis, causing the horizontal member of the guard to rotate up until it no longer engages substantial striking vehicle structure of lower profile vehicles. This also would make PCI more likely.

2. Exclusions

The SNPRM excluded certain categories of vehicles from the requirement for rear impact guards. These categories were: Single unit trucks (also referred to as ''straight body'' because they are unarticulated); truck tractors; pole trailers; low chassis trailers; special purpose vehicles; and wheels-back vehicles.

Almost every comment addressed one or more of these exclusions. The consumer safety groups and most of the comments from the general public were especially opposed to the exclusion for single unit trucks. The consumer groups were also opposed to the exclusion for wheels back vehicles. There was little opposition from the consumer safety groups or the public to the exclusion for special purpose vehicles. Industry groups generally supported all the exclusions. Many industry groups and equipment manufacturers requested that their vehicles be explicitly included in the special purpose vehicle category. Industry groups also commented on the wheels back vehicle definition, generally requesting that it be expanded to cover more vehicles.

The comments on the excluded vehicles are discussed in more detail below. Since there was no substantive comment on the exclusions for pole trailers, low chassis trailers, and truck tractors, these exclusions are not discussed.

a. Single Unit (Straight body) Trucks. NHTSA expressly solicited comment on the issue of applicability of the proposed rule to single unit trucks. The majority of docket submissions, including comments from trade associations, safety and consumer interest groups, and private citizens, expressed the opinion that the proposed rule should apply to single unit trucks. Many of these commenters stated that the exclusion did not make sense because the underriding passenger vehicle would not be any less at risk in striking the rear end of a single unit truck than striking the rear of a trailer. Advocates said single unit trucks account for about 300,000 of the 500,000 heavy vehicles produced each year. IIHS and Advocates stated that medium and heavy duty single unit trucks account for 36 percent of all the vehicle miles traveled by heavy vehicles and 68 percent of all non-fatal (AIS 1–5) injuries associated with passenger vehicle impacts with the rear of heavy vehicles. CRASH's analysis indicated that the number of fatal accidents in which passenger vehicles collide with the rear of trailers has been increasing at a rate of about 6 percent per year. According to CRASH, rear impacts involving single unit trucks have been increasing at a rate of 11 percent annually in the recent past.

Mr. Robert Crail and Transamerica Leasing opposed the exclusion because single unit truck manufacturers would be able to obtain guards from the same places as trailer manufacturers. Mr. Byron Bloch recommended that single-unit trucks should be excluded only by exemption petition from individual manufacturers, and that if petitions are granted, NHTSA should require a warning sign on the truck. The State of New York Attorney General expressed the opinion that NHTSA is required by the 49 U.S.C. Chapter 301 requirement that a safety standard must meet the need for motor vehicle safety to include single unit trucks in this rule, based on the ''very modest costs involved.'' Mr. John Kourik could find no definition anywhere in NHTSA's regulations for the term ''single unit truck.''

Additional organizations recommending that the rule apply to single unit trucks include the International Brotherhood of Teamsters, the Owner-Operator Independent Drivers' Association, the Specialized Carriers and Rigging Association, and the American Insurance Services Group. About 2,200 private citizens also recommended that the rule apply to single unit trucks as well as trailers and semitrailers.

Mr. John Tomassoni commented that including vehicles with a gross vehicle weight rating (GVWR) of greater than 14,536 kg (10,000 lbs) in the statistical

cost benefit analysis made the trailers appear unfairly dangerous because most single unit trucks are in the low end of this weight range, yet the larger trucks can still cause underride fatalities. He suggested that cost effectiveness be reassessed on the basis of requiring guards on trucks and trailers weighing greater than 11,790 kg (26,000 lbs). He further recommended that even if the single unit exclusion were retained in the final rule, the rule should at least ''encourage'' manufacturers of single unit trucks above 9,070 kg (20,000 lbs) GVWR to install ''upgraded'' guards.

Manufacturers, owners, and operators of single unit trucks supported the agency proposal to exclude those vehicles from the rulemaking. Single unit trucks have many different configurations, according to Ford Motor Company (Ford), some of which would make installation of the rear impact protection guard impracticable. For example, school buses with a 3,810 mm (150 in) distance from the rear axle to the rear extremity of the vehicle would have their angle of departure severely limited by the proposed rear impact protection guard. Ford also indicated that there would be many questions concerning guard installation responsibility because many units are sold without bodies to secondary manufacturers.

The National Truck Equipment Association (NTEA) supported NHTSA's proposal to exclude single unit trucks from the guard requirements, citing the low rate of rear end impacts for trucks as compared to trailers. NTEA also stated that single unit truck rear impact guard installation cost would be considerably more (up to $3,000 where custom-made guards are required) than the installation cost for trailers because of the high number of special purpose single unit trucks. It also said that single unit trucks are often farm vehicles, dump trucks, and delivery trucks that travel short distances, at lower speeds, generally in the daytime.

NSWMA says the single unit truck exclusion is important because the safety benefits to passenger vehicles would be offset by the increased risk to the truck operator and waste service personnel resulting from the design restrictions that would be imposed by requiring guards on single unit trucks.

Agency accident data indicate that approximately 27 percent of the striking vehicle occupant fatalities and 15.8 percent the serious injuries (AIS 3-5) in rear end collisions with heavy vehicles involve single unit trucks, while 73 percent of striking vehicle occupant fatalities and 84.2 percent of serious injuries involve trailers and semitrailers. This relatively low involvement of single unit trucks contrasts sharply with their contrasts sharply with their predominance among heavy vehicles. Single unit trucks represent 72 percent of registered heavy vehicles. Also, there are 1.6 times as many single unit trucks produced as there are trailers and semitrailers that would be candidates (i.e., assuming they do not qualify for some other exclusion) for underride protection guards. Therefore, this rule covers about 28 percent of the total vehicles and would achieve about 73 percent of the fatality reduction benefits. The SNPRM estimated that collisions with single unit trucks account for approximately 68 percent of the total injuries based on 1986 NASS data. Based on a reevaluation of the data from the newer General Estimate System (GES) data set, NHTSA has revised this estimate to about 18 percent.

According to FARS data from 1982 through 1992, fatalities resulting from passenger vehicle collisions with the rear of single unit trucks have remained fairly constant, with a slight increasing trend. This shows that single unit trucks are not an increasing problem, as suggested by CRASH.

NHTSA has concluded that this category of vehicles should not be covered by the rule at this time. It may be desirable to cover at least some single unit trucks. However, the agency lacks sufficient information at this time to deal with single unit trucks as it has with trailers, i.e., by excluding from the larger group of single unit trucks those subgroups with special problems. The agency is concerned that the variety, complexity, and relatively low weight and chassis strength of many single unit trucks could require guards that are substantially more costly than the guards for trailers and semitrailers. This would prevent the industry from benefiting from the economies of scale that the separate equipment and vehicle standards were intended to promote. NHTSA is currently conducting a study of the single unit truck production to see if there are groups of single unit trucks that, like trailers, could be fitted with rear impact guards without excessive costs.

The vast majority of heavy truck striking vehicle occupant fatalities (73 percent) and injuries (84.2 percent) involve collisions with the rear ends of trailers and semitrailers. Therefore, NHTSA can capture most of the benefits from rear underride guards by requiring them at the outset for trailers and semitrailers. The agency may supplement this action by initiating a separate rulemaking action to consider rear impact guards for single unit trucks after completion of its study.

The agency does not see any merit in Mr. Tomassoni's suggestion. There would be little benefit in requiring or encouraging manufacturers to install guards on single unit trucks with a GVWR greater than 11,790 kg (26,000 lbs), because only 10 percent of single unit trucks are between 4,536 and 11,790 kg (10,000 and 26,000 lbs).

In response to Mr. Kourik's observation that there was no definition in the SNPRM or elsewhere for ''single unit truck,'' the regulatory text of the final rule does not use that term, thus such a definition is not necessary there. Single unit truck refers to trucks that do not have an articulated chassis.

b. Special Purpose Vehicles. Several manufacturers and operators of specialty vehicles such as vehicles with rear mounted liftgates, dump trailers, auto transporters, farm equipment, and recreational vehicles recommended that their vehicles be explicitly excluded from the rule. They recommended that the definition of ''special purpose vehicle'' in the 1992 SNPRM be revised to include these vehicles.

A number of liftgate manufacturers submitted comments. Thieman Tailgates, Waltco Truck Equipment Company (Waltco), and Leyman Manufacturing Company all recommended explicit exclusion of trailers equipped with liftgates. Most liftgates are installed after the trailer leaves the manufacturer. They also stated that it would be very burdensome on small businesses to design liftgates around the guard configuration requirements.

Waltco estimated that several thousand new vehicles are equipped with liftgates annually. If required, guards for trailers equipped with liftgates would be more expensive than NHTSA's cost estimate, according to Waltco. Some guards would have to be movable and compliance testing would be more complicated since some configurations would necessitate that the guard be mounted to the liftgate itself. Waltco provided diagrams to show that all of its liftgate designs are incompatible because they must either swing through the guard area or create dangerous shear/pinch zones between gate and guard.

Anthony Liftgates (Anthony) estimated that each year 3,000 new trailers and semitrailers are equipped with rear mounted liftgates, 500 of the liftgates being manufactured by Anthony. Anthony stated that rail-type liftgates are the most commonly used and their rail-type models would be compatible with the proposed guard.

Anthony requested that NHTSA give special consideration to vehicles equipped with liftgates since certain restrictions would be highly detrimental to the industry.

NTEA stated that vehicles equipped with liftgates comprise the largest group of special purpose vehicles. NTEA estimated that 2,500 of the 150,000 trailers built each year are equipped with liftgates at the rear, comprising only 1.7 percent of the market. The NTEA assured NHTSA that no trailer manufacturer would use the special purpose vehicle exclusion to evade the guard requirement because liftgates cost ($6,000) so much more than guards.

The Leyman Manufacturing Company stated that positioning the guard as specified in the proposal would eliminate the installation of liftgates. Leyman also pointed out that vehicles equipped with liftgates were excluded from the January 8, 1981 NPRM.

The agency concurs with the observations made by liftgate manufacturers regarding the complexities associated with the installation of rear impact protection guards on these vehicles. NHTSA acknowledges that vehicles equipped with liftgates were cited in the January 8, 1981 NPRM as vehicles that would fall within the special purpose vehicle exclusion. The agency also agrees that the rear impact protection guard would interfere with the operation of some rear liftgates. However, NHTSA does not think it is necessary to exclude all liftgate-equipped trailers explicitly. Instead, the agency has modified the definition of special purpose vehicle to make it clear that vehicles with rear mounted liftgates that operate by swinging through the area that is designated for the rear impact guard are excluded. Consequently, vehicles equipped with the rail type liftgates that Anthony Liftgates said would be compatible with a guard are not excluded, while vehicles equipped with tuckunder and other types of incompatible liftgates are excluded.

The Manufactured Housing Institute (MHI) stated that manufactured homes are generally moved once or twice over their lifetime on an integral, temporary chassis under strict oversize permits. MHI recommended that NHTSA exclude these trailers from the proposed rule, stating that the standard should not apply to manufactured homes, modular structures, and mobile homes. According to MHI, there are about 300,000 units transported annually in the United States, being hauled as trailers for an average distance of 160 to 200 kilometers (km) (100 to 125 miles (mi)). MHI also noted that mobile homes in transport have 305 to 560 mm (12 to 22 in) of ground clearance.

Mobile homes are not covered by the FMVSS. NHTSA has long interpreted the Mobile Home Construction and Safety Standards Act of 1974 (Pub.L. 93–383) as withdrawing NHTSA's authority to regulate mobile homes as motor vehicles and vesting this authority in the Department of Housing and Urban Development. Therefore, mobile homes are not covered by this rule. This conclusion does not, however, apply to motor homes.

The Recreational Vehicle Industry Association (RVIA) recommended that recreational trailers be excluded from the proposed regulation as special purpose vehicles. According to RVIA, recreational vehicles are probably involved in a small percentage of the rear end collisions due primarily to low mileage and little nighttime highway exposure. RV trailers often require high ground clearance for off-road use, according to RVIA.

The agency does not believe that recreational vehicles should be included in the definition of special purpose vehicle because they do not have work performing equipment in their lower rear extremity. However, NHTSA has concluded that certain recreational vehicles should be explicitly excluded under the applicability section of the rule. Most of these vehicles are believed to be low chassis vehicles, and even if they are not, their chassis will generally be too weak to support a guard. Therefore, vehicles with ''temporary living quarters,'' as defined in 49 CFR 523.2, are excluded from the rule.

The Specialized Carriers and Rigging Association (SC&RA) suggested that two types of heavy hauler trailers be listed in the final rule as examples of ''special purpose vehicles''. The vehicles cited have rear end configurations that vary based on use. According to SC&RA, rear underride guards would interfere with the function of these types of vehicles. The SC&RA asserts that design considerations prevent compliance with the proposed rule.

If SC&RA is correct in asserting that design considerations prevent the two vehicle types from having rear impact guards, these vehicles would clearly meet the special purpose vehicle definition. The illustrations provided indicate that they have work performing equipment or would qualify for the low chassis vehicle exclusion. Therefore, the agency sees no need to explicitly list these vehicles as examples of special purpose vehicles.

NSWMA recommended that the ''special purpose vehicle'' definition be modified to include vehicles with special equipment mounted at the rear that is not directly affected in an adverse manner by the rear impact protection guard. NSWMA believes that this exclusion is necessary because of the potential impairment of function in waste industry specialized hauling vehicles from factors such as reduced departure angle and off-road use.

NHTSA does not believe that the special purpose vehicle definition should be modified in response to NSWMA's recommendation. Vehicles with work performing equipment at the rear whose operation would not be adversely affected by the rear impact guard should be equipped with guards. All trailer users will have to deal with a reduced angle of departure. Further, exclusions of vehicles need to be made on the basis of physical attributes instead of anticipated functional restrictions. NSWMA has not alleged that these trailers are physically different from any other trailers, only that they are used in a demanding operational environment.

NHTSA believes that the use of adjustable guards will alleviate most operational restrictions where the work performing equipment does not qualify the vehicle for the special purpose vehicle exclusion, such as trailers that travel on uneven surfaces or that have beds that raise and lower at their rear ends. NSWMA acknowledged that most of the vehicles it refers to are excluded as single unit trucks.

The National Potato Council recommended that vehicles used primarily for harvesting be excluded from the rule. The Potato Council stated that rear-unload semitrailers have rear conveyors whose function would be significantly impaired if rear impact guards were required. It also requested that eighteen wheelers that travel no more than 240 km (150 mi) from their base farm should be excluded from the proposed rule. These vehicles are on road for very short periods, according to the Potato Council—one to two months in the spring to haul seeds, and a similar period in the fall to bring the crop to market.

Assuming the Potato Council is correct that underride guards would substantially impair the function of the rear-unload semitrailers, these vehicles would qualify as special purpose vehicles. A specific mention of them in the rule is therefore unnecessary. Regarding the eighteen wheelers, sporadic road use and short travel distances have been considered in the past as factors in determining whether vehicles are ''motor vehicles'' that are subject to NHTSA's safety standards. However, the fact that the vehicles are

used on the public roads only two to four months a year does not disqualify them as motor vehicles. The same may be true for many pickup trucks used on farms. Merely because a given trailer happens to be used on the farm most of the year does not mean it was not manufactured primarily for use on the public streets. Similarly, the shortness of the trips the vehicle takes is not dispositive, unless it is used only to cross from field to field or to travel between job sites. It appears that the trailers the Potato Council refers to are used primarily for transportation during the spring and fall. Therefore, the definition of special purpose vehicles has not been modified as recommended by the Potato Council.

Mr. John Kourik suggested that the application section be expanded to show whether or not the rule covers the following kinds of vehicles: boat trailer, fire fighting vehicle (some have trailers), trailer converter dolly, agricultural commodity truck, auto transporter (a combination vehicle), container chassis trailer, pulpwood trailer, heavy hauler trailer, and straddle trailer. In the alternative, he suggests that some method for obtaining interpretations of configurations is needed, other than tedious petitions for exemptions.

NHTSA is not providing interpretations for each of the vehicles listed by Mr. Kourik. Applicability is based on the configuration of the vehicle, rather than vehicle function, as Mr. Kourik's list suggests. The agency is unsure about the physical attributes of some of the listed vehicles. In the absence of more detailed information, NHTSA cannot give definitive interpretations for the listed vehicles. NHTSA believes that the rule adequately defines those vehicles that are included and those that are excluded. NHTSA believes further that the applicability will be obvious in almost all cases to persons sufficiently familiar with details of the physical attributes of the vehicles in question. Given his knowledge about these vehicles, Mr. Kourik should be able to determine whether they fall within the agency's exclusions. The agency notes that the public is not required to petition for an exemption to obtain an interpretation of the rule's applicability to a particular vehicle configuration. The Office of the Chief Counsel issues such interpretations in response to letters of inquiry which provide sufficient background information.

FHWA initially indicated that the definition of a special purpose vehicle should include certain dimensions for the work performing equipment. The maximum ground clearance, minimum width, or maximum distance between any work performing equipment and the side of the vehicle were cited by FHWA as dimensions that should be included in the definition. According to FHWA, adding language to the rule that further defines the location of work performing equipment would provide better guidance to vehicle manufacturers and reduce potential enforcement problems for NHTSA and FHWA.

NHTSA believes that the relationship of the work performing equipment to the location in which the rear impact guard would have to be installed, and not the mere presence of the equipment, should be the criterion for determining exclusion. If the equipment needs to move through the area that could be occupied by the horizontal member of the guard, as defined in S5.1.1 through 5.1.3 of the vehicle standard, the presence of a guard would impair or eliminate the usefulness of the equipment. NHTSA has decided that it would be both impracticable and an undue burden to require rear impact guards on such vehicles. However, if the equipment is detached or stows out of the guard area while in the vehicle is in transit, a guard would not be an impediment to the equipment, and a guard is required. Although it is not required, NHTSA encourages vehicle manufacturers to move the guard within the limits of S5.1.1 through S5.1.3 to accommodate the work performing equipment.

It is neither practical nor necessary to specify location or dimensions for the work performing equipment. The ground clearance, width, and distance from the work performing equipment to the side of the vehicle are not relevant because the work performing equipment is not required to perform as a guard. NHTSA does not want to restrain innovation by giving direction to vehicle manufacturers on the configurations of their work performing equipment. Defining the dimensions or location of the work performing equipment is not necessary for an enforceable rule. All that is required to confirm the applicability of the exclusion is a demonstration that the work performing equipment, while the vehicle is in transit, resides in the area defined by S5.1.1 through S5.1.3 as the guard's horizontal member or passes through that area to perform its function. Therefore, the definition of special purpose vehicle in the rule has been revised to reflect that the foundation of the special purpose vehicle exclusion is the presence of work-performing equipment that resides in or, to perform its function, moves through the area designated for the underride guard while the vehicle is in transit.

The definition of special purpose vehicle has been modified to explicitly recognize the piping of hazardous materials tankers as work performing equipment. RSPA's rule for underride guards on hazardous materials tankers (49 CFR 178.345–8) is generally compatible with this rule, and this rule applies to hazardous materials tankers. However, to prevent any confusion as to the relationship between RSPA's rule and NHTSA's rule, this rule explicitly recognizes that piping that carries hazardous materials while in transit needs the special protection that is provided by RSPA's rule. Therefore, hazardous materials tankers with piping in front of the guard are excluded from the requirements of this rule.

c. Wheels Back Vehicle. A ''wheels back vehicle'' was defined in the SNPRM's vehicle standard as a vehicle which has a permanently fixed rear axle with tires whose rearmost surface is located not more than 305 mm (12 in) forward of a vertical transverse plane tangent to the rear extremity of the vehicle. Several commenters recommended that the wheels back vehicle definition be changed to include vehicles with rear tires located as much as 610 mm (24 in) from the rear extremity of the vehicle. Other commenters expressed concern that impacting the rear tires of a trailer or semitrailer is similar to impacting a rigid barrier and the agency should delete this category of exclusion.

Industry groups and some other commenters favored an expansion of the wheels back definition by allowing the wheels to be positioned more than 305 mm (12 in) forward of the rear extremity. The ATA and the TTMA noted that the proposed rule allowed guards to be mounted up to 305 mm (12 in) forward of the rear extremity while allowing an additional 125 mm (5 in) to meet the strength requirements of the 1992 SNPRM. TTMA recommended, therefore, that the distance between the rear tires and the rear extremity of the vehicle be increased from 305 to 430 mm (12 to 17 in). According to ATA, the spirit of the ''wheels back vehicle'' exclusion would not be violated by allowing the tires to be located as much as 560 mm (22 in) forward of the rear extremity. ATA reasons that guards mounted 305 mm (12 in) forward of the rear of the vehicle will allow some vehicles to underride more than 305 mm (12 in) prior to contact with the guard since the forward most area of the car may not be contacted.

TTMA's recommendation to add the 125 mm (5 in) of permitted test

deflection to the 305 mm (12 in) of permitted setback, resulting in 430 mm (17 in) of permitted setback, is not practical. It does not account for the fact that, in a crash, a portion of the impacting vehicle's initial energy and velocity will be absorbed after the guard has undergone 125 mm (5 in) of deflection or deformation. This is a very different situation from one in which the initial impact contact between the passenger car and the underride guard takes place 430 mm (17 in) forward of the trailer's rear extremity. With a 430 mm (17 in) setback, even if the rear impact guard were completely rigid, the striking vehicle would still advance closer to the rear of the trailer (and potential PCI) before coming to rest because the vehicle would be forced to absorb more energy (thus increasing the likelihood of occupant injury).

While some passenger vehicles may underride the impact protection guard prior to contact, as stated by ATA, this non-contact underride is not likely to be more than a few inches. If anything, this fact mitigates in favor of requiring the guards to be positioned farther to the rear. This final rule adds the requirement that the underride guard be positioned as far to the rear of the vehicle as practical.

Some commenters recommended allowing the wheels to be positioned even farther forward if there were a guard in between the rear wheels. The ATA encouraged NHTSA to allow vehicles to use the ''wheels back'' exclusion vehicles with tires up to 610 mm (24 in) forward of the rear extremity if a ''center'' guard were provided. This partial guard would be located no more than 305 mm (12 in) forward of the rear extremity and no more than 150 mm (6 in) inboard of the inside sidewalls of the tires. The center guard's placement between the wheels would complement the tires in resisting underride. Mr. Robert Crail suggested that a partial underride protection guard be specified for double trailers with the rear tires mounted between 430 and 610 mm (17 and 24 in) forward of the rear extremity, because the trailer wheels are as effective as a guard at full deflection. He said that the partial rear underride protection guard should extend to within 205 mm (8 in) of the inboard sidewalls of the rear tires.

The agency believes that the specification of a partial rear impact guard would not enhance safety because it is unlikely that a passenger vehicle would pass between the rear tires of the trailer. The spacing between the inside surfaces of the rear tires on a 2,600 mm (102 in) wide trailer was measured by the agency as 1,310 mm (51.5 in). There are almost no passenger vehicles produced with widths of less than 1600 mm (63 in). Therefore, even a centric collision between the widest trailers and the narrowest cars would probably result in considerable engagement of the tires with the frontal vehicle structure.

Other commenters, in addition to the ATA and Mr. Crail, believe that the 305 mm (12 in) maximum offset makes the exclusion too restrictive. Yellow Freight System suggested that the wheels back definition be changed to allow the wheels to be 560 mm (22 in) forward of the rear extremity. It states that most trailers cannot position the wheels closer than 460 to 560 mm (18 to 22 in) from the rear extremity because the combined effect of shorter distances and the Federal Bridge formula would be to restrict the weight of the load that can be carried. Strick Trailers stated that operators routinely position the rear axle at 915 and 1,065 mm (36 and 42 in) forward of the rear extremity of the vehicle, which would exclude them from the wheels back vehicle category.

The rationale for all these suggestions appears to be that most trailers with the axle in the rearmost position have the rear tire within a range of 405 to 610 mm (16 to 24 in) forward of the rear, and an expanded wheels-back definition would lower costs by allowing more trailers to qualify as wheels back. The agency notes that many of the commenters mentioned ''positioning'' of the rear wheels, which implies that they are referring to the vehicles that do not have fixed axles. Therefore, these vehicles would not be eligible for the wheels back exclusion anyway. NHTSA does not believe that carriers would change the wheel positioning of their fleets merely to avoid the small one-time incremental cost of installing an upgraded guard, as Yellow Freight suggests. Moreover, while NHTSA is concerned with the costs of the rule, the ultimate goal is to prevent PCI without imparting unacceptable deceleration forces to the impacting vehicle. Allowing vehicles to have their wheels farther forward would increase the likelihood of PCI. The agency does not believe, based on available information, that the definition of wheels back vehicle should be modified to increase the allowable distance between the rear extremity of the vehicle and the rear tires.

Advocates appeared to favor eliminating the wheels back exclusion altogether. Advocates stated that the agency has no test data on ''wheels back vehicles'' which support the conclusion that they should be excluded from the proposed rulemaking. Advocates further stated that the agency has contradicted the argument that impacting the rear wheels of trailers results in acceptable crash forces, because the Preliminary Regulatory Evaluation (PRE) likens a collision with the wheels to striking a ''rigid wall.'' Trailer tires will not provide an acceptable level of rear impact protection, according to Advocates. Advocates acknowledged that two crash tests with wheels back vehicles were conducted by the Texas Transportation Institute (TTI), but referenced a paper co-authored by John Tomassoni, a former NHTSA engineer, as evidence that the collision forces would be ''relatively high.'' Advocates also stated that the rule should define ''permanent'' settings for sliding bogeys by requiring that they be welded or bolted in place.

Vehicles meeting the wheels back requirements should be capable of preventing the trailer structure from penetrating a passenger vehicle occupant compartment during a rear end collision. Two full-scale crash tests involving ''wheels back vehicles'' were conducted by the TTI in 1979. For these wheels back vehicle tests, the rear tires were located about 100 to 205 mm (4 to 8 in) forward of the rear extremity of the trailer. In each test, in an offset crash in which a Chevrolet Impala struck the tires and in a centric crash in which a VW Rabbit struck the axle and other components between the tires, PCI was prevented at about 56 kph (35 mph). In the test with the VW Rabbit, post-crash photos indicate that, when dynamic underride reached the maximum, the body of the trailer was 305 to 355 mm (12 to 14 in) from the A-pillar and windshield area of the passenger vehicle. These crash tests indicate that a fixed rear axle with the tires mounted within 305 mm (12 in) of the vehicle's rear extremity constitutes an adequate substitute for a rear impact protection guard from the standpoint of preventing PCI.

The rear wheels of a trailer are adequate for managing the energy of an underride crash. The on-board dummy instrumentation during both crashes indicated a relatively low potential for serious injuries. In fact, the wheels back vehicle performed better in the offset crash than all other guards tested in the TTI research project except the Quinton-Hazel guard. Although the maximum vehicle deceleration of a VW Rabbit that was driven centrically into a wheels-back trailer at 33 mph was similar to the deceleration of the same make/model vehicle driven into a rigid wall (35 mph), partial guards for the sole purpose of energy absorption in centric crashes are not warranted from a cost-benefit standpoint.

NHTSA has decided to retain the wheels back exclusion for vehicles with the rear wheels within 305 mm (12 in) of the rear extremity of the vehicle. Vehicles with wheels set farther forward than that will have sufficient room between the guard and the trailer rear tires for the guard to deflect and absorb some of the passenger vehicle's energy before the guard contacts the rear wheels of the trailer. Vehicles with rear wheels within 305 mm (12 in) of the rear extremity will not have sufficient room for the guard to do much good before it contacts the wheels.

The wheels back vehicle exclusion is intended to apply exclusively to vehicles with the rear tires permanently located close to the rear extremity of the vehicle. The concept of ''permanent'' is clear enough and does not require elaboration, as Advocates suggests. The rear wheels must be either welded in place or designed so that they can occupy only one position. Vehicles with moveable bogeys cannot be wheels back vehicles even if their wheels are set in a wheels back position, as suggested by the comments of Yellow Freight and Strick Trailers.

D. Costs

Many of the commenters addressed the question of cost of the guard. The consumer safety groups thought that the agency's estimate of the cost of energy absorbing guards was too high. Conversely, the industry commenters generally thought the agency's estimate was either low or about right. Most of the private citizens who commented on guard cost said that energy absorbing guards were worth the price, without giving specifics.

Advocates stated that NHTSA had not taken into account the fact that economies of scale would lower the cost of hydraulic energy-absorbing guards to nearly that of the proposed guard. It said that the hydraulic guards are within the price range of the proposed guard. Advocates also commented that NHTSA provides no guidance information to carriers on effectiveness, cost/benefit ratio, mounting heights, or crashworthiness that would allow them to choose a superior (i.e., energy absorbing) guard.

The American Automobile Association (AAA), the New York Attorney General, and many private citizens expressed the view that the additional cost for energy absorbing guards (variously described by them as approximately $200 additional, or ''modest'') is reasonable. These commenters did not provide information on where such guards would be obtained or why a doubling to tripling of the cost represents a ''modest'' increase.

TTMA provided a table showing estimated costs to the customer over current ''bumper'' (NHTSA assumes TTMA means guard) prices for various kinds of vehicles. Estimated cost increases range from $130 to $200, except for tilt deck trailers. For those vehicles, the costs of the hydraulics to swivel the guard out of the way would cost $3000.

Based on the costs incurred during the fabrication of 15 minimally compliant guards for the VRTC research project, NHTSA estimates the incremental cost of the guard hardware is between $77 and $96 per unit. For a complete analysis of costs, see the Final Regulatory Evaluation (FRE). NHTSA agrees with Advocates that the economies of scale would lower the cost of hydraulic guards, or any guards, if they were to become widely accepted. However, Advocates submitted no data to show that the economies of scale would lower the cost of hydraulic guards close to the estimated price of the minimally compliant guard. NHTSA sees no basis for this assertion, especially since, to the best of this agency's knowledge, there are currently no hydraulic guards on the U.S. market. NHTSA has taken the economies of scale into account in its cost estimates in the FRE, as an offset to dealer mark-up, but notes that the amount cannot be quantified. TTMA's estimated incremental costs that were submitted to the agency on June 8, 1992 are 30 to 100 percent higher than NHTSA's if their list represents incremental increases. If, as NHTSA assumes, TTMA is referring to total guard equipment cost (excluding fuel penalty, maintenance, and payload loss), then NHTSA agrees.

As to Advocates' suggestion about providing information on hydraulic guards, the market place will sort out competing guard designs and technologies based on their effectiveness, cost/benefit ratio, mounting heights, and crashworthiness. Manufacturers of superior guards can be expected to provide carriers with information favorable to their products. If hydraulic energy absorbing guards are more advantageous than minimally compliant guards, vehicle manufacturers will undoubtedly install them. The commenters who stated that the benefits of energy absorbing guards were worth the modest costs will see this opinion tested in the marketplace.

Another aspect of costs addressed by the commenters was the revenue loss to the carriers due to the added mass of approximately 25 kg (55 lbs) of the upgraded guards displacing payload that they could otherwise carry. Advocates contended that NHTSA had eliminated hydraulic guards from consideration because of their extra weight, even though NHTSA's contracted researcher and agency staff had said that the payload displacement was exaggerated and the percentage of trailer fleet impacted is infinitesimal. Advocates concluded that the revenue loss is negligible because the majority of commercial carriers reach their maximum cubic cargo capacity before they reach permissible gross load limits. Advocates also believes that the agency based its conclusions on unrealistically high estimates of hydraulic guard mass (135 kg, or 300 lbs). Ford incorrectly asserted that NHTSA's calculated costs do not account for lost revenue from payload displacement. Transamerica Leasing stated that the 25 kg (55 lb) add-on in mass is a correct figure. Yellow Freight System considers the loss of productivity due to additional tare weight to be unquantifiable. However, it estimated the fuel cost penalties due to the additional weight of the guard at $29.53, and the maintenance of the upgraded guards at $13.33, over the lifetime of the trailers. Finally, Yellow Freight System estimated that this rule will cost it $2.2 million as their trailer fleet is retired and replaced.

The agency has reviewed its cost and weight data and concluded that the Quinton-Hazel guard is more costly (at $300) and heavier (135 kg, or 300 lbs). NHTSA does not believe that the McCafferty study, Advocates' basis for the contention that energy absorbing guards are weight-efficient, adequately supports that conclusion. A September 1980, Texas Transportation Institute report entitled ''Performance Upgrading of Commercial Vehicle Underride Guards'' states that the mass of the Quinton-Hazel energy absorbing guard ranges from about 60 to 143 kg (133 to 315 lbs). Yellow Freight System's estimates were based on the PRE, but NHTSA has updated these figures in the analysis in the FRE. The FRE now provides estimates of the payload displacement revenue loss of 33 cents over the life of the trailer, and estimates of lifetime fuel cost of $23.05.

Guard design and testing are other additional costs associated with this rule. Although some guards probably already meet the proposed requirements, NHTSA assumes in the FRE that all existing guards will need to be redesigned to meet the strength and energy absorption requirements. No commenters provided cost estimates for guard redesign. However, NHTSA notes that design and testing are one-time costs, and can be recovered over the

lifetime of the guard design. NHTSA further notes that the TTMA's Recommended Practice ''Rear Impact Guard and Protection'' appears to have been based on the SNPRM. This Recommended Practice is designated RP No. 92–94, and was originally issued in April of 1994 and revised in November of 1994. Apparently it has been adopted as an industry standard, so little reengineering should be necessary.

Testing of a guard design once it is produced is another expense related to this rule. IIHS commented that guard manufacturers must carefully consider the chassis in developing installation instructions. Therefore, IIHS concluded that testing with the guard attached to a part of the chassis (provided by the vehicle manufacturer) would result in little additional burden.

NHTSA agrees that there will generally be little additional burden in testing on a chassis part. However, the agency does not want to require such testing because there may be other valid bases for certification, such as engineering analysis, on certain models of trailers. Why should the guard manufacturer test on fifty different chassis parts when they are all nearly identical? NHTSA has adopted IIHS's suggestion to some extent by allowing testing on trailers, but it is an option, not a requirement.

Mr. John Kourik stated that there is no estimate given for the trailer manufacturer's costs for testing in situations in which the guard is incorporated or integrated into the chassis structure itself, rather than attached as a separate unit.

There is no estimate given for integrated guard designs because the agency considers it highly unlikely that manufacturers will produce integrated guards. Replacement or repair costs on such guards would be prohibitive. The FRE's estimates of testing costs are based on conventional designs that meet the performance requirements. Vehicle manufacturers can be expected to factor the increased testing costs into their decision whether to produce such an integrated design.

Four liftgate manufacturers commented on the responsibility for and burden of testing. Waltco Truck Equipment Company, Leyman Manufacturing Corporation, and Venco stated that not excluding vehicles with liftgates would put an undue burden on vehicle manufacturers of developing and testing guards compatible with the various liftgate designs. Leyman added that the SNPRM's estimated guard cost of $112 doesn't account for its removal and reinstallation when installing liftgates. Anthony Liftgates, Inc. stated that liftgate manufacturers cannot afford testing and that testing should be the responsibility of the trailer manufacturer or the last party to certify the trailer for highway use.

The agency recognizes the costs associated with designing, installing and testing underride guards. This is the reason NHTSA changed to separate equipment and vehicle standards. Testing is the responsibility of the guard manufacturer, not the trailer manufacturer. However, as with any piece of motor vehicle equipment required by a FMVSS, subsequent alterers may not render the guard inoperative. Moreover, trailers bearing liftgates in the lower rear have been excluded from the requirement to have rear impact guards.

NHTSA has also accounted for the incremental fuel and materials cost increase that will be expended in complying with the upgraded guard requirements. NHTSA estimates that an additional 25 kg (55 lbs) of steel will be required in a minimally compliant guard. This means that approximately 2,340 metric tons (2,580 tons) of additional steel will be required annually by the trailer industry. NHTSA estimates a lifetime additional fuel cost, due to the additional weight of the upgraded guards, of $23.05. Based on the weighted vehicle miles traveled, this translates to an additional 0.00007 liters of diesel fuel per kilometer (0.00003 gallons per mile). Since most tractor trailers now get about 2.3 kilometers per liter (5.5 miles per gallon), this seems insignificant.

E. Benefits

The main benefits of this rule will be the fatalities and injuries avoided by the upgraded guards. Commenters focussed solely on fatality and injury benefits. Advocates believes that the benefits of the rule could be much higher than NHTSA estimated. It believes that potential benefits are being foregone because a minority of newly manufactured trucks, only 15 percent of the American truck fleet, will be covered. Many other commenters also stated that a minority of trucks would be covered. Advocates says that NHTSA has not calculated the benefits lost through exclusion of special purpose vehicles and wheels back vehicles. Advocates also said that the agency's estimated benefit of 9 to 19 lives per year does not account for deaths due to unsurvivable deceleration forces from overly rigid guards permitted by the proposal. It believes that saving only 9 to 19 out of its claim of nearly 500 truck rear-end fatalities per year is inadequate. Advocates cannot reconcile the drop in the estimated number of lives saved (63 in the 1981 NPRM versus 9–19 in the 1992 SNPRM) with the SNPRM's statement that single unit trucks cause a minority of PCI deaths. It asserted that such a low benefits figure indicates that NHTSA has not revealed certain assumptions that it used in its cost benefit analysis. Advocates asserted that the benefits of the lower death/injury rate from energy absorbing guards make them worth requiring.

CRASH and IIHS asserted that the data NHTSA relied on in its calculations were inadequate. CRASH argued that NHTSA improperly arrived at a 4:1 combination/single unit ratio by using 26 ''hard copy'' FARS reports, while dismissing as ''unrepresentative'' other state, national, and international studies. It cited estimates of 28 percent, 44 percent, and most recently 66 percent of rear end truck fatalities caused by underride. Using the 66 percent number and NHTSA's upper range (27 percent) of guard effectiveness, CRASH concluded that a rule including single unit trucks would save 122 lives in 1995, six times the highest NHTSA projection. CRASH accuses NHTSA of defining underride as only involving full PCI as a pretext for discarding the much higher figures from other studies.

IIHS thinks that NHTSA's estimate of 72 fatalities per year is understated by between 46 and 96 fatalities because the crashes were not properly coded in the FARS. It based this conclusion on IIHS calculations of parked truck underrides and other underrides that were not so coded in the FARS, extrapolating from California data. CRASH also stated that parked trucks were not properly treated in the analysis, even though they cause 20 percent of underride deaths. IIHS cited studies concluding that the European standard is only saving half of the lives that it could because its guard, at about 560 mm (22 in), is set too high. IIHS also sent a September 16, 1994 letter to the agency detailing inconsistencies between FARS and NASS data on underride. The letter concluded that the FARS analysts failed approximately 50 percent of the time to identify whether underride was involved because of inadequate information on the PARs and because FARS analysts are not familiar with typical indicators of underride.

CRASH also faulted NHTSA's benefit calculation methods, and says that the agency systematically chose the lowest possible figures to calculate potential benefits in the Preliminary Regulatory Evaluation (PRE). It thinks that NHTSA is falsely showing the underride fatality statistics as static by using only the

FARS data on combination trucks, and only during the period from 1985 to 1989. Its analysis of the data show that the single unit truck underride fatalities are growing most rapidly (80 percent between 1982 to 1989, claiming 145 persons in 1989). Extrapolating these data to the rule's 1995 effective date, CRASH calculates that single unit trucks account for 229 out of 685 total underride fatalities, an increase of 90 percent over NHTSA's static total.

Regarding Advocates' comment on the limited applicability of the SNPRM, the benefits of requiring guards on single unit trucks are far less than those for requiring guards on trailers because single unit trucks cause a proportionally smaller number of underride fatalities. Also, single unit trucks come in a much wider variety of configurations, making it much more difficult to attach standardized guards. Even if it would be cost beneficial to require some subsets of the single unit truck fleet to use underride guards, NHTSA does not now have the information necessary to define those subsets that should not be excluded. The FRE has a more complete analysis of the benefits. For these reasons, NHTSA may address underride guards for single unit trucks in a separate rulemaking. NHTSA has determined that there will be essentially no benefits lost by excluding wheels-back vehicles, since the rear tires of the trailer represent an adequate underride guard from the standpoint of PCI prevention. A similar argument can be made for low-chassis vehicles. PCI will be avoided due to trailer design, but the rear of the trailer may have other impact hazards that reduce effectiveness as a rear impact guard. The agency does not know how many trailers have work performing equipment that would qualify for the special purpose vehicle exclusion, but believes this number to be very small. Any benefits lost to it would likely be partially compensated for by the work performing equipment, such as liftgates, acting as a guard.

The energy absorption requirement in the final rule will adequately prevent deaths and injuries from overly rigid guards. Therefore, the agency believes that its estimate of the fatalities prevented by this rule is realistic, and will not be degraded by overly rigid guards, as Advocates claims. NHTSA cannot respond to Advocates comment about the benefits of the hydraulic energy absorbing guards because the agency has not been provided with sufficient information. Inquiries with the Quinton-Hazel Company revealed that they no longer produce the guard, and the basis for the study concluding that the guard was cost effective is unclear.

Regarding Advocate's comment that a rule that would save only 9 to 19 fatalities is inadequate because it should save more lives, the agency notes that two key factors resulted in the low benefits calculations: (1) The low annual underride fatality rate, and (2) guard effectiveness estimates. Based on 8 years of FARS data and 79 detailed police accident reports, NHTSA's preliminary estimate (PRE) determined that the national underride rate with PCI was 14–23.5 percent. This translates to an annual average of only 59 fatalities per year attributable to rear underride with PCI, or about one per state per year. Based on the 1979 Michigan data, NHTSA estimates that about one-third of these fatalities occur at speeds below 40 kph (25 mph), which is the maximum design speed of the minimally compliant guard for most vehicles. The low number of potentially affected fatalities was reflected in the guard effectiveness range (18–27 percent) used in the agency's preliminary benefit calculations. This effectiveness range is similar to that suggested for the comparable European guard by the British researchers cited by Advocates.

The drop in estimated benefits from the earlier notices is a result of improved calculation methods and data. The 1981 NPRM's estimate of 63 fatalities was based on an assumed average PCI rate of 35 percent and an assumed guard effectiveness of 50 percent. The 9–19 fatalities estimated in the SNPRM were based on a PCI underride fatality rate of 14 to 23.4 percent and a guard effectiveness of 18 to 27 percent. NHTSA subsequently has decided that a more appropriate methodology is to rely only on the FARS database, which is now well established. Therefore, based on better data (13 years of FARS plus inspection of 139 police accident reports) NHTSA now believes that the PCI rate is 11 to 17 percent. The 10 to 25 percent guard effectiveness estimate is consistent with experience with the European guard, modeling studies, and accident investigations, which are detailed in the FRE. Based on these parameters, the anticipated annual benefits of this rule, including the effects of conspicuity, are estimated to be 4 to 15 lives saved by preventing PCI and 29 serious injuries (AIS 2–5) prevented. An unknown number of non-PCI related lives will also be saved, as well as 145 minor injuries (AIS 1) prevented.

Advocates' suggestion that NHTSA is using unstated assumptions in the calculation of benefits is baseless. The regulatory evaluations explicitly state all of the important factors and assumptions used in the benefits calculation.

NHTSA acknowledges that the FARS data are not perfect. However, the agency disagrees with CRASH and IIHS that the FARS is an inadequate basis for making estimates of benefits and drawing conclusions for the purpose of this rulemaking. In fact, the FARS and NASS databases are the best available. The FARS represents a census of all fatal accidents occurring in the United States. Therefore, NHTSA considers the FARS to be a better basis for decisionmaking than the regional studies and casual surveys cited by some of the consumer safety groups. Based on NHTSA's survey of 113 police accident reports from across the country, NHTSA concludes that fatalities coded as underride are properly coded and that virtually all of them involve PCI. It is possible that some fatal accidents where some degree of underride occurred should have been coded as PCI in the police accident reports or the FARS, but were not. However, the FARS are the best data available.

The NASS, HSRI, and VSC (IIHS-sponsored) studies are inappropriate indicators of the percentage of underride fatalities with PCI. The use of non-census data such as NASS, which is based on a sample of tow-away crashes, has the potential to build sampling error into the conclusions. Problems with using these various studies are explained in more detail in the FRE. The FRE also explains why it is inappropriate to extrapolate the underride statistics from the atypical State of California to the rest of the nation, as IIHS urges.

The agency believes that CRASH's comment that a rule including single unit trucks would save 122 lives in 1995 is based on highly optimistic assumptions. Their estimate is based on unrealistic projections of the number of fatalities (685, compared to 423 in 1992), a high underride rate from a United Kingdom study which may not be applicable to the United States, and the 27 percent upper bound of guard effectiveness range estimated in the Preliminary Regulatory Evaluation.

NHTSA has expanded the scope of data considered in its FRE benefits analysis, as suggested by CRASH and other consumer safety groups, but the augmented data do not support their characterization of the underride problem. NHTSA included the FARS data for the eleven years from 1982 through 1992. In response to the comments from the consumer safety

groups, NHTSA has taken parked trailers into account in the analysis of benefits in the FRE. NHTSA has also expanded the number of police accident reports it inspected to determine the ratio of single unit trucks to trailers involved in parked underride accidents. NHTSA looked at 60 selected police accident reports over a three year period to determine this ratio. Figure IV–1A in the FRE demonstrates that the underride problem for single unit trucks is not increasing, as CRASH suggests, but is relatively static, as stated in the PRE. Therefore, NHTSA believes that CRASH's extrapolations of average annual fatalities to the rule's effective date are invalid. For reasons explained in the FRE, the agency remains unpersuaded by the estimates of underride percentage and the corresponding benefits suggested in CRASH's comments.

Ford also questioned NHTSA's estimated level of benefits. Ford stated that enhanced conspicuity, seat belt usage, and the reduction in the number of alcohol-related crashes will also reduce the incidence of underride-type crashes. Therefore, Ford doubts that reductions of fatalities and injuries in the magnitude estimated by the agency could be achieved solely by this rule. Ford also said that over the last ten years private trailer fleets that do not depend on public docks have lowered designs to increase productivity through use of small diameter, low profile tires and low ride suspensions. Therefore, a 1,000 to 1,250 mm (40 to 50 in) high trailer chassis may no longer be typical, and therefore the future benefits of rule may be inaccurate.

NHTSA agrees that all the factors cited by Ford will contribute to the reduction in fatalities from underride. However, NHTSA has accounted for the effects of the conspicuity rule in its FRE. Moreover, the effectiveness of the new automatic restraint systems depends on the prevention of PCI, because air bags need space to deploy. There may be some reduction in underride crashes due to increased seat belt usage and alcohol awareness, but such synergistic factors cannot be separated out at this point because projections of seat belt and alcohol use are difficult. NHTSA will assess analytically the effectiveness of this standard in the future and will normalize these factors in the analysis. Although lower chassis heights may now be more common in private fleets, NHTSA disagrees with Ford's suggestion that the standard trailer heights are no longer ''typical.'' NHTSA's data indicate that the vast majority of trailer chassis are still set at the 1,000 to 1,250 mm (40 to 50 in) height to provide access to public loading docks. The 1990/92 TTMA van trailer data indicate that 98 percent of floor heights range from 1,219 to 1,320 mm (48 to 52 in). The agency considers it unlikely that loading dock heights will change dramatically in the near future because standardization is very important to the trucking industry and a large investment would be required to change heights.

Volkswagen enclosed three studies of European accident statistics showing reductions in fatalities of between 5 and 17 percent for the European guards, and recommended harmonization with the European standards.

NHTSA does not dispute the studies cited by Volkswagen on the effectiveness of the European guard. However, NHTSA is not bound to follow the European standard. NHTSA's rule should be about 10 to 25 percent effective and the requirements of this rule are slightly more stringent than the European standard.

Yellow Freight System conducted a review of their 1991 accidents and concluded that there was no safety benefit from the use of the guards. It does not believe that any of its fatal accidents would have been prevented by the upgraded guards.

Yellow Freight System provided no evidence to show that upgraded guards on their trailers would not have prevented any fatalities during 1991. Even if it had, the particular experience of a single carrier over a single year period would not be indicative of the extent of the need for underride guards in the industry generally.

F. Lead Time

Most of the commenters supported the agency's proposal of a 24 month lead time. No commenter said that two years was insufficient. The American Truck Dealers Division of the National Automobile Dealers Association approved of the proposed lead time, stating that it will minimize the impact of the rule on the industry. Mr. Robert Crail, a trailer designer and manufacturer, indicated that two years would be adequate. The TTMA also supported the two year lead time, based on the requirements proposed in the SNPRM.

One commenter suggested that the proposed lead time was too long. Mr. John Tomassoni recommended that the lead time be lowered to 1 year, because only ''marginally more effort'' would be required to design, produce, and install the required guards. According to Mr. Tomassoni, this is because vehicle manufacturers are already producing and installing ''geometrically compliant'' guards, or guards that meet the configuration requirements of this rule, on 16 m (53 ft) trailers in order to meet State requirements. Since the basic design shown in the SNPRM has been available for some time, he believes that upgrading the current guards to meet the strength requirements should not be difficult.

While this may be a valid point for those manufacturers currently producing geometrically compliant guards, establishing too short a lead time period might create a competitive disadvantage for those manufacturers who are not. Also, the agency wants to allow enough lead time to permit engineers to produce innovative, highly efficient guard designs, rather than forcing them to rush to market with an upgraded version of the current design. Further, the agency notes that an energy absorption requirement has been added in the final rule that Mr. Tomassoni did not consider in suggesting that a year would be sufficient lead time.

Therefore, NHTSA does not believe that a shorter lead time than two years would be appropriate. Engineers will have to design guards and rigid test fixtures, and the guards will have to be manufactured, tested, and in some cases marketed. There is currently no industry in the business of manufacturing underride guards for third parties, although NHTSA anticipates that one may emerge to meet the demand created by this rule. Smaller trailer manufacturers wishing to acquire manufactured guards need time to work with the emerging guard designers/manufacturers regarding their frame and chassis configurations and appropriate attachment hardware. Because a relatively low level of technology is needed, NHTSA believes that two years will be sufficient time. Therefore, the two year lead time is being retained in the final rule. Compliance will be required 24 months from the date of publication of this rule in the Federal Register.

G. Miscellaneous Issues

1. Metric System Units

Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) and Executive Order 12770 direct Federal agencies to use the metric system (SI, the International System of Units) where possible in rulemakings. Therefore, the values that were proposed in English system units in the SNPRM are adopted using SI units. To facilitate cross-reference to the preceding notices, approximate English system equivalent measurements follow the SI measurements in the preamble.

2. Federal Highway Administration Rulemaking on Underride Guards

Many commenters, mostly private citizens, requested that NHTSA make this rule apply to existing trailers, thus requiring that the owners of those trailers remove the FHWA-required guards and retrofit the trailers with improved underride guards. The law firm of Lipman and Katz, Mr. Byron Bloch, and many others requested that NHTSA mandate retrofit of existing trucks.

NHTSA has no authority to issue such requirements. Authority to regulate existing trucks rests with the Federal Highway Administration. Some commenters realized this. The New York Attorney General said there is no excuse for not coordinating with FHWA and arranging for a parallel and simultaneous rulemaking by that agency for existing trucks. The American Truck Dealers Division of the National Automobile Dealers Association requested that NHTSA encourage FHWA to require retrofit.

FHWA has worked with NHTSA to ensure that its standards are compatible with the Federal Motor Vehicle Safety Standards whenever possible. As part of this effort, FHWA will continue to adopt appropriate sections of NHTSA's standards into the Federal Motor Carrier Safety Regulations (FMCSR). FHWA is considering a rulemaking to amend the FMCSR at 49 CFR 393.86, *Parts and Accessories Necessary for Safe Operation*, to require vehicles which are subject to NHTSA's rear impact guard requirements to maintain the devices. As part of that rulemaking, FHWA will determine if retrofitting of existing vehicles with rear impact guards should be required.

XII. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and Regulatory Policies and Procedures

This rulemaking action was reviewed under Executive Order 12866. The action has been determined to be ''significant'' under Executive Order 12866 and under the Department of Transportation regulatory policies and procedures because it concerns a matter in which there is substantial public interest. The FRE for this rule describes the economic and other effects of this rulemaking action in detail. A copy of the FRE has been placed in the docket for public inspection.

The cost and benefit information for this rule can be summarized as set forth below. Rear impact guards meeting the requirements of this rule would cost approximately $128 to $148 per trailer or semitrailer. This cost includes an incremental increase (above the cost of current rear impact guards) of between $77 and $96 per guard to satisfy the rear impact guard and rear impact protection requirements. An additional estimated cost of $7.00 per trailer may be needed to reinforce the frame of the trailer, depending on guard design. To repair the horizontal member of the guard when damaged, NHTSA estimates an incremental increase in lifetime maintenance/repair costs of $16.44. An added lifetime present value fuel cost of approximately $23.05 is estimated, based on the added mass of the guard (an incremental increase of approximately 25 kg or 55 lbs). The added weight will also cause a revenue loss due to payload displacement of $0.33 over the life of the trailer. There will be an additional cost for compliance testing of the guard (excluding the cost of the test fixture), which is estimated to be between $1.16 and $1.46 per vehicle. The incremental cost increase of the guard will be less than two percent of the trailer retail cost. NHTSA estimates that the total consumer cost of the rule will be about $11.9 to 13.7 million annually.

The agency estimates that 4 to 15 PCI fatalities will be eliminated annually by this rule when it is in full effect and all vehicles to which it is applicable are in compliance. The estimate of fatality reduction is based on the number of passenger vehicle occupants killed in PCI collisions. It is also based on an estimate that the rear impact guard is 10 to 25 percent effective in reducing PCI fatalities. There will also be non-PCI underride fatalities prevented but the agency was unable to quantify them. NHTSA further estimates that 29 non-minor injuries (AIS 2–5) and 145 minor injuries (AIS 1) would be prevented in both PCI and non-PCI collisions.

B. Regulatory Flexibility Act

NHTSA has analyzed the potential impacts of this rule on small entities under the Regulatory Flexibility Act and certifies that this rule will have a significant economic impact on a substantial number of small entities. NHTSA has described those possible impacts in the FRE, which is, in part, a regulatory flexibility analysis.

The agency seeks to reduce the severity of underride crashes by improving the design of the affected vehicle, the trailer or semitrailer. Accordingly, trailer and semitrailer manufacturers will be affected by the rule. Based on the 1994 AAMA Motor Vehicle Facts and Figures, there were approximately 327 trailer and semitrailer manufacturers in the U.S. in 1991, most of which are small manufacturers (less than 500 employees). These manufacturers will be required to produce each of their vehicles with a rear impact guard and ensure that the guard is positioned within the specified distances from the ground, the vehicle's sides, and the vehicle's rear extremity. If the vehicle manufacturers obtain a guard from a supplier, they will only have to install the guard in accordance with the installation instructions provided with the guard. If the vehicle manufacturers produce their own guards, they will have to ensure that the guards meet the rear impact requirements for guards.

The agency has designed this rule to minimize the impact on small businesses by issuing separate equipment and vehicle standards. This issuance of two separate standards relieves small trailers manufacturers of the necessity for testing their completed trailers. Rear impact guard suppliers as well as vehicle manufacturers which manufacture their own guards may test mount guards on a test fixture to assess for compliance with the strength and energy absorption requirements of the equipment standard. This compliance test option minimizes the cost impact on small entities in a manner consistent with the purposes of 49 U.S.C. Chapter 301.

C. Executive Order 12612 (Federalism)

Based on available information, the agency believes the federalism implications of this rulemaking are minimal. Nearly all states require underride protection guards for heavy trailers and semitrailers. Further, most states require that the guards meet certain configuration requirements, or that they be positioned in a certain location relative to the rear and sides of the vehicle. The rule will preempt State requirements for rear impact protection. However, the agency believes that federalism implications will be minor because the guards required by this rulemaking are not fundamentally different from those required by State law. Several States including Michigan, North Carolina, New York, and New Jersey require longer trailers 15 m (50 ft) to have guards with the configuration required by this rulemaking. For practical purposes, the only effect that this rulemaking would have in these States is to require the guards to be tested and certified for strength and energy absorption.

The agency has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. NHTSA believes that effective rear

impact protection measures can be implemented only at the national level. Only vehicle manufacturers can produce trailers and semitrailers with improved rear impact protection. The improvements required by this rulemaking will cause vehicle manufacturers and operators to incur costs that could affect their competitive position if compliance is voluntarily implemented by some, but not all manufacturers. This Federal rulemaking applies uniformly to all manufacturers and will ensure that the competitive position of the manufacturers will not be significantly affected by these safety improvements.

D. Preemptive Effect and Judicial Review

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rulemaking establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceeding before parties may file suit in court.

E. Paperwork Reduction Act

The labeling and installation instructions requirements associated with this rule have been submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 USC chapter 35.

Administration: National Highway Traffic Safety Administration.

Title: Labeling and Installation Instructions Requirements for Rear Impact Guards.

Need for Information: Labeling—Identification of guards as meeting equipment standard for strength and energy absorption; Installation Instructions—Ensure that obtained guards are properly installed.

Anticipated Use of information: Labeling—Routine trailer inspection by FHWA; Installation Instructions—Installation of obtained guards by vehicle manufacturers.

Frequency: Labeling—On occasion; Installation Instructions—On occasion.

Burden Estimate: Labeling—7,500 hrs.; Installation Instructions—2,000 hrs.

Average Burden Hours per Respondent: Labeling—25; Installation Instructions—10.

For Further Information Contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh St. SW, Washington DC 20590, (202) 366–4735.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. A new § 571.223 is added to read as follows:

§ 571.223 Standard No. 223; rear impact guards.

S1. *Scope*. This standard specifies requirements for rear impact guards for trailers and semitrailers.

S2. *Purpose*. The purpose of this standard is to reduce the number of deaths and serious injuries that occur when light duty vehicles collide with the rear end of trailers and semitrailers.

S3. *Application*. This standard applies to rear impact guards for trailers and semitrailers subject to Federal Motor Safety Standard No. 224, *Rear Impact Protection* (§ 571.224).

S4. *Definitions*.

In this standard, directional terms such as *bottom, center, height, horizontal, longitudinal, transverse,* and *rear* refer to directions relative to the vehicle orientation when the guard is oriented as if it were installed on a vehicle according to the installation instructions in S5.5 of this section.

Chassis means the load supporting frame structure of a motor vehicle.

Guard width means the maximum horizontal guard dimension that is perpendicular to the longitudinal vertical plane passing through the longitudinal centerline of the vehicle when the guard is installed on the vehicle according to the installation instructions in S5.5 of this section.

Horizontal member means the structural member of the guard that meets the configuration requirements of S5.1.1 through 5.1.3 of § 571.224, Rear Impact Protection, when the guard is installed on a vehicle according to the guard manufacturer's installation instructions.

Hydraulic guard means a guard designed to use fluid properties to provide resistance force to deformation.

Rear impact guard means a device installed on or near the rear of a vehicle so that when the vehicle is struck from the rear, the device limits the distance that the striking vehicle's front end slides under the rear end of the impacted vehicle.

Rigid test fixture means a supporting structure on which a rear impact guard can be mounted in the same manner it is mounted to a vehicle. The rigid text fixture is designed to resist the forces applied to the rear impact guard without significant deformation, such that a performance requirement of this standard must be met no matter how small an amount of energy is absorbed by the rigid test fixture.

S5. Requirements.

S5.1 *Cross-Sectional Vertical Height.* The horizontal member of each guard shall have a cross sectional vertical height of at least 100 mm at any point across the guard width. See Figure 1 of this section.

S5.2 *Strength and Energy Absorption.* When tested under the procedures of S6 of this section, each guard shall comply with the strength requirements of S5.2.1 of this section at each test location and the energy absorption requirements of S5.2.2 of this section at test location P3, as specified in S6.4 of this section. However, a particular guard (i.e., test specimen) need not be tested at more than one location.

S5.2.1 *Guard Strength.* The guard must resist the force levels specified in S5.2.1 (a) through (c) of this section without deflecting by more than 125 mm.

(a) A force of 50,000 N at test location P1 on either the left or the right side of the guard as defined in S6.4(a) of this section.

(b) A force of 50,000 N at test location P2 as defined in S6.4(b) of this section.

(c) A force of 100,000 N at test location P3 on either the left or the right side of the guard as defined in S6.4(c) of this section.

S5.2.2 *Guard Energy Absorption.* A guard, other than a hydraulic guard, shall absorb by plastic deformation within the first 125 mm of deflection at least 5,650 J of energy at each test location P3. See Figure 2 of this section.

S5.3 *Labeling.* Each guard shall be permanently labeled with the information specified in S5.3 (a) through (c) of this section. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward-facing surface of the horizontal member of the guard, 305 mm inboard of the right end of the guard.

(a) The guard manufacturer's name and address.

(b) The statement: ''Manufactured in _____'' (inserting the month and year of guard manufacture).

(c) The letters ''DOT'', constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard.

S5.4 *Guard Attachment Hardware.* Each guard, other than a guard that is to be installed on a vehicle manufactured by the manufacturer of the guard, shall be accompanied by all attachment hardware necessary for installation of the guard on the chassis of the motor vehicle for which it is intended.

S5.5 *Installation Instructions.* The manufacturer of rear impact guards for sale to vehicle manufacturers shall include with each guard printed instructions in English for installing the guard, as well as a diagram or schematic depicting proper guard installation. The manufacturer of a rear impact guard for one of its own vehicles shall prepare and keep a copy of installation procedures applicable to each vehicle/guard combination for a period of one year from the date of vehicle manufacture and provide them to NHTSA on request. The instructions or procedures shall specify:

(a) Vehicles on which the guard can be installed. Vehicles may be designated by listing the make and model of the vehicles for which the guard is suitable, or by specifying the design elements that would make any vehicle an appropriate host for the particular guard (e.g., vehicles with frame rails of certain spacing and gauge of steel).

(b) A description of the chassis surface to which the guard will be attached, including frame design types with dimensions, material thickness, and tire track width. This description shall be detailed enough to permit the agency to locate and duplicate the chassis surface during compliance testing.

(c) An explanation of the method of attaching the guard to the chassis of each vehicle make and model listed or to the design elements specified in the instructions or procedures. The principal aspects of vehicle chassis configuration that are necessary to the proper functioning of the guard shall be specified. If the chassis strength is inadequate for the guard design, the instructions or procedures shall specify methods for adequately reinforcing the vehicle chassis. Procedures for properly installing any guard attachment hardware shall be provided.

S6. *Guard Test Procedures.* The procedures for determining compliance with S5.2 of this section are specified in S6.1 through S6.6 of this section.

S6.1 *Preparation of Hydraulic Guards.* For hydraulic guards, the horizontal member of the guard is deflected in a forward direction until the hydraulic unit(s) have reached the full extent of their designed travel or 610 mm, whichever occurs first. The hydraulic units are compressed before the application of force to the guard in accordance with S6.6 of this section and maintained in this condition throughout the testing under S6.6 of this section.

S6.2 *Guard Installation for Strength and Energy Absorption Tests.*

(a) The rear impact guard is attached to a test device.

(b) The test device for the compliance test will be whichever of the following devices, if either was used, the manufacturer used as a basis for its certification of the guard in S5.3(c) of this section. If the manufacturer did not use one of these devices or does not specify a device when asked by the agency, the agency may choose either of the following devices—

(1) A rigid test fixture. In the case of testing on a rigid test fixture NHTSA will consult the installation instructions or procedures to determine the surface or structure that the guard is supposed to be mounted to and mount it to the rigid test fixture in the same way.

(2) A complete trailer for which installation of the guard is suitable, as provided in the manufacturer's installation instructions or procedures required by S5.5 of this section. The trailer chassis is secured so that it behaves essentially as a fixed object during the test, such that the test must be passed no matter how little it moves during the test.

(c) The guard is attached in accordance with the instructions or procedures for guard attachment provided by the guard manufacturer for that guard as required by S5.5 of this section.

S6.3 *Force Application Device.* The force application device employed in S6.6 of this section consists of a rectangular solid made of rigid steel. The steel solid is 203 mm in height, 203 mm in width, and 25 mm in thickness. The 203 mm by 203 mm face of the block is used as the contact surface for application of the forces specified in S5.2.1 (a) through (c) of this section. Each edge of the contact surface of the block has a radius of curvature of 5 mm plus or minus 1 mm.

S6.4 *Test Locations.* With the guard mounted to the rigid test fixture or to a complete trailer, determine the test locations P1, P2, and P3 in accordance with the procedure set forth in S6.4 (a) through (c) of this section. See Figure 1 of this section.

(a) Test location P1 is the point on the rearmost surface of the horizontal member of the guard that:

(1) Is located at a distance of 3/8 of the guard width from the vertical longitudinal plane passing through center of the guard;

(2) Lies on either side of the center of the guard's horizontal member; and

(3) Is 50 mm above the bottom of the guard.

(b) Test location P2 is the point on the rearmost surface of the horizontal member of the guard that:

(1) Lies in the longitudinal vertical plane passing through the center of the guard's horizontal member; and

(2) Is 50 mm above the bottom of the guard.

(c) Test location P3 is any point on the rearmost surface of the horizontal member of the guard that:

(1) Is not less than 355 mm and not more than 635 mm from the vertical longitudinal plane passing through center of the guard;

(2) Lies on either the right or left side of the horizontal member of the guard; and

(3) Is 50 mm above the bottom of the guard.

S6.5 *Positioning of Force Application Device.* Before applying any force to the guard, locate the force application device such that:

(a) The center point of the contact surface of the force application device is aligned with and touching the guard test location, as defined by the specifications of S6.4 of this section.

(b) The longitudinal axis of the force application device passes through the test location and is perpendicular to the transverse vertical plane that is tangent to the rearmost surface of the guard's horizontal member.

S6.6 *Force Application.* After the force application device has been positioned according to S6.5 of this section, apply the loads specified in S5.2.1 of this section. Load application procedures are specified in the S6.6 (a) through (d) of this section.

(a) Using the force application device, apply force to the guard in a forward direction such that the displacement rate of the force application device is constant and not less than 1 mm and not more than 1.5 mm per second.

(b) If conducting a strength test to satisfy the requirement of S5.2.1 of this section, the force is applied until the forces specified in S5.2.1 of this section have been exceeded, or until the displacement of the force application device has reached at least 125 mm, whichever occurs first.

(c) If conducting a test to be used for the calculation of energy absorption

levels to satisfy the requirement of S5.2.2 of this section, apply the force to the guard until displacement of the force application device has reached 125 mm. For calculation of guard energy absorption, the value of force is recorded at least ten times per 25 mm of displacement of the contact surface of the loading device. Reduce the force until the guard no longer offers resistance to the force application device. Produce a force vs. deflection diagram of the type shown in Figure 2 of this section using this information. Determine the energy absorbed by the guard by calculating the shaded area bounded by the curve in the force vs. deflection diagram and the abscissa (X-axis).

(d) During each force application, the force application device is guided so that it does not rotate. At all times during the application of force, the location of the longitudinal axis of the force application device remains constant.

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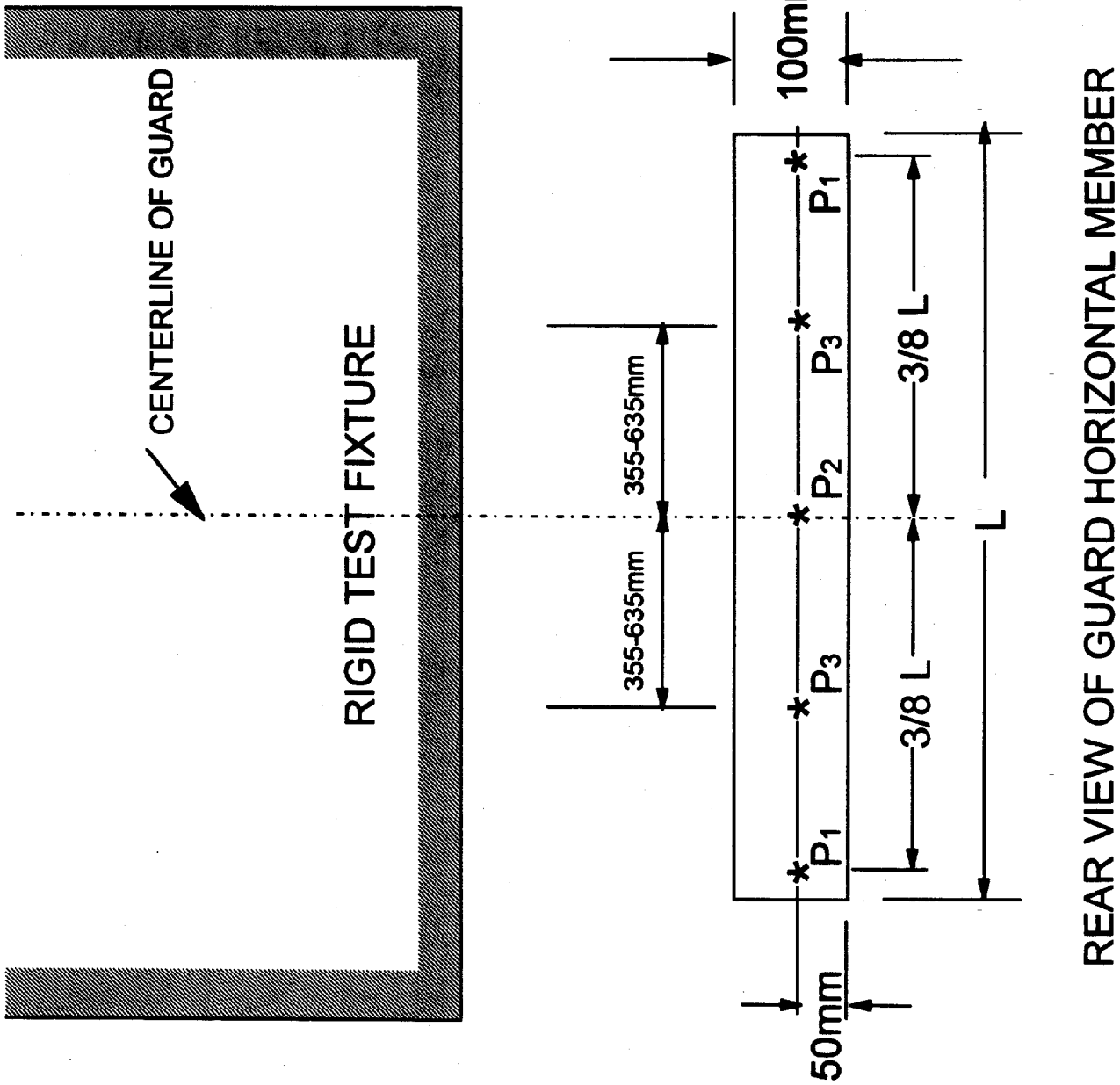
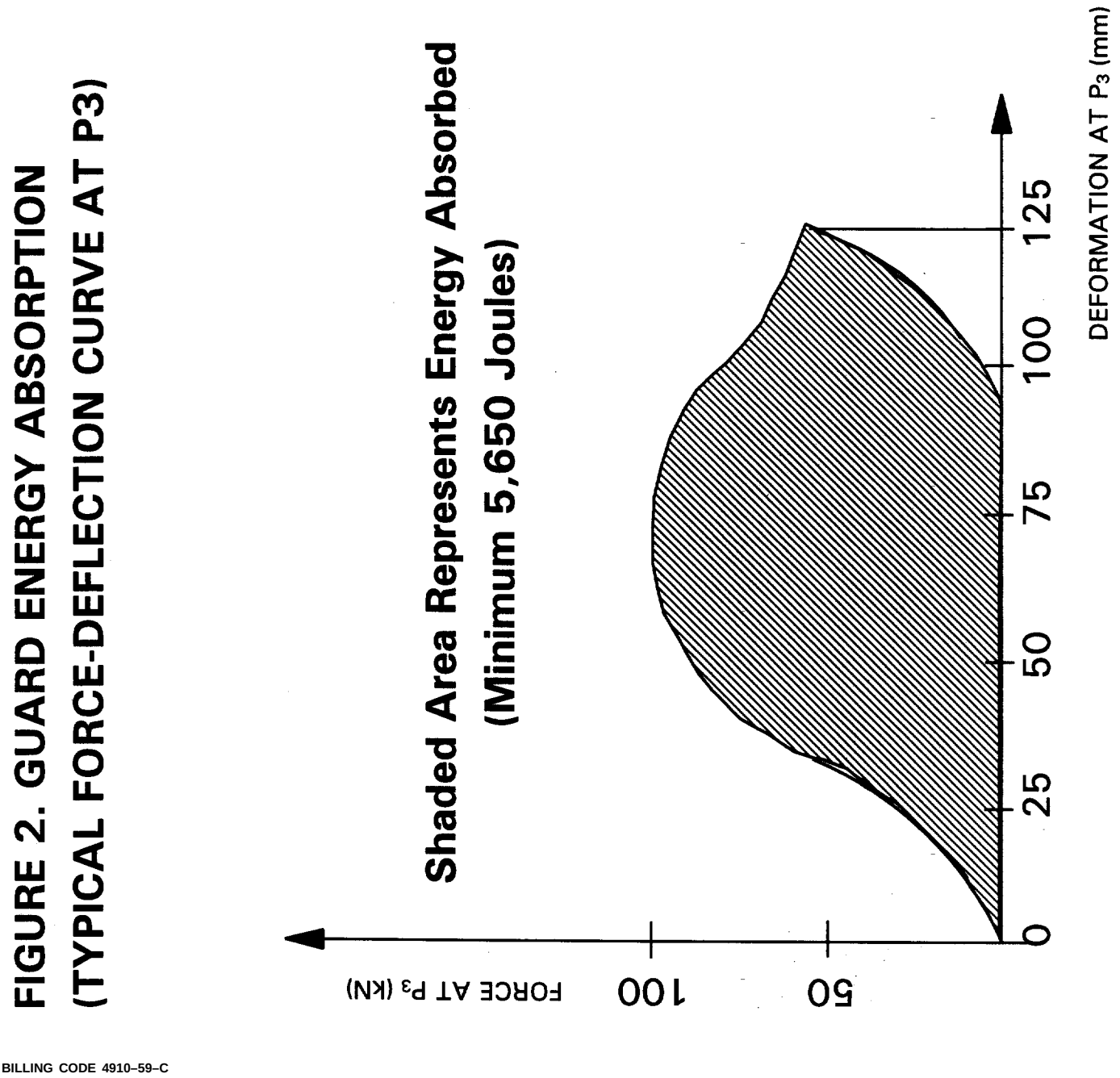
FIGURE 1. PERFORMANCE REQUIREMENTS





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3. A new § 571.224 is added to read as follows:

§ 571.224 Standard No. 224; rear impact protection.

S1. *Scope.* This standard establishes requirements for the installation of rear impact guards on trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg or more.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of trailers and semitrailers with a GVWR of 4,536 kg or more.

S3. *Application.* This standard applies to trailers and semitrailers with a GVWR of 4,536 kg or more. The standard does not apply to pole trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, or temporary living quarters as defined in 49 CFR 529.2

S4. *Definitions.*

Chassis means the load supporting frame structure of a motor vehicle.

Horizontal member means the structural member of the guard that meets the configuration requirements of S5.1 of this section when the guard is installed on the vehicle according to the installation instructions or procedures required by S5.5 of § 571.223, Rear Impact Guards.

Low chassis vehicle means a trailer or semitrailer having a chassis that extends behind the rearmost point of the rearmost tires and a lower rear surface that meets the configuration requirements of S5.1.1 through 5.1.3 of this section.

Outer or *Outboard* means away from the trailer centerline and toward the side extremities of the trailer.

Rear extremity means the rearmost point on a vehicle that is above a horizontal plane located 560 mm above the ground and below a horizontal plane located 1,900 mm above the ground when the vehicle is configured as specified in S5.1 of this section and when the vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillights, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

Rounded corner means a guard's outermost end that curves upward or forward toward the front of the vehicle, or both.

Side extremity means the outermost point on a vehicle's side that is located above a horizontal plane 560 mm above the ground, below a horizontal plane located 190 cm above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm forward of that plane when the vehicle is configured as specified in S5.1 of this section. Non-structural protrusions such as taillights, hinges, rubber bumpers, and latches are excluded from the determination of the outermost point.

Special purpose vehicle means a trailer or semitrailer having work-performing equipment (including any pipe equipment that would hold hazardous materials in transit and require rear-end protection under 49 CFR 178.345–8(d)) that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard, as defined by S5.1.1 through S5.1.3 of this section.

Wheels back vehicle means a trailer or semitrailer whose rearmost axle is permanently fixed and is located such that the rearmost surface of tires of the size recommended by the vehicle manufacturer for the vehicle on that axle is not more than 305 mm forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

S5. *Requirements.*

S5.1 *Installation; vehicle configuration.* Each vehicle shall be equipped with a rear impact guard certified as meeting Federal Motor Vehicle Safety Standard No. 223, Rear Impact Guards (§ 571.223). When the vehicle to which the guard is attached is resting on level ground, unloaded, with its full capacity of fuel, and with its tires inflated and air suspension, if so equipped, pressurized in accordance with the manufacturer's recommendations, the guard shall comply with the requirements of S5.1.1 through S5.1.3 of this section. See Figure 1 of this section.

S5.1.1 *Guard width.* The outermost surfaces of the horizontal member of the guard shall extend outboard to within 100 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle, but shall not extend outboard of those planes. See Figure 1 of this section.

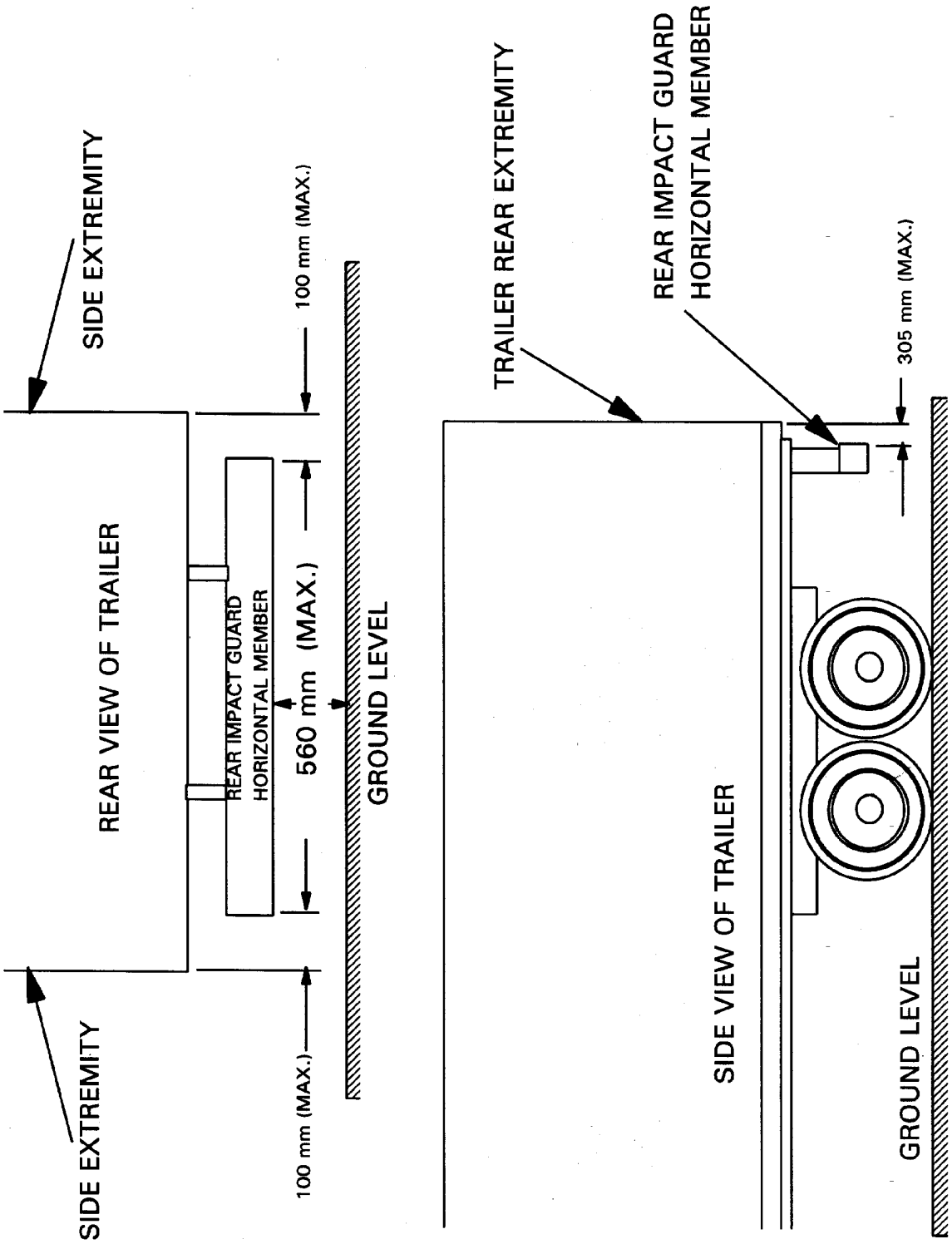
S5.1.2 *Guard height.* The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm at any point across the full width of the member. Notwithstanding this requirement, guards with rounded corners may curve upward within 255 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle. See Figure 1 of this section.

S5.1.3 *Guard rear surface.* At any height 560 mm or more above the ground, the rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane. Notwithstanding this requirement, the horizontal member may extend rearward of the plane, and guards with rounded corners may curve forward within 255 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

S5.2 *Installation Requirements.* Guards shall be attached to the vehicle's chassis by the vehicle manufacturer in accordance with the installation instructions or procedures provided pursuant to S5.5 of Standard No. 223, *Rear Impact Guards* (§ 571.223). The vehicle must be of a type identified in the installation instructions as appropriate for the guard.

BILLING CODE 4910–59–P

FIGURE 1. CONFIGURATION REQUIREMENTS



Issued on January 16, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–682 Filed 1–17–96; 4:42 pm]

BILLING CODE 4910–59–C

Federal Register

Wednesday
January 24, 1996

Part III

Department of the Interior

Bureau of Indian Affairs

Department of Health and Human Services

Indian Health Service

25 CFR Chapter V and Part 900

Indian Self-Determination and Education Assistance Act Amendments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Chapter V and Part 900

RINs 1076–AC20; 0905–AC98

Indian Self-Determination and Education Assistance Act Amendments

AGENCIES: Bureau of Indian Affairs, Indian Health Service, Departments of the Interior and Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretaries of the Department of Interior (DOI) and the Department of Health and Human Services (DHHS) propose a joint rule to implement section 107 of the Indian Self-Determination Act, as amended, including Title I, Public Law 103–413, the Indian Self-Determination Contract Reform Act of 1994. A joint rule, as required by section 107(a)(2)(A)(ii) of the Act, will permit the Departments to award contracts and grants to Indian tribes without the unnecessary burden or confusion associated with having two sets of rules for single program legislation. In section 107(a)(1) of the Act Congress delegated to the Departments limited legislative rulemaking authority in certain specified subject matter areas, and the joint rule addresses only those specific areas. As required by section 107(d) of the Act, the Departments have developed this proposed rule with active tribal participation, using the guidance of the Negotiated Rulemaking Act.

DATES: Comments must be submitted on or before March 25, 1996. We will send copies of this notice of proposed rulemaking (NPRM) to each tribe. We especially invite comments from individual tribes, tribal members and tribal organizations.

ADDRESSES: Written comments to these rules may be sent to Betty J. Penn, Indian Self-Determination Amendments Regulations Comments, Indian Health Service, Room 6–34, 5600 Fishers Lane, Parklawn Building, Rockville, MD 20857. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m., Monday through Friday beginning approximately 2 weeks after publication. Comments will also be available for public inspection at the Department of the Interior, Room 4627, Main Interior Building, 1849 C Street NW, Washington, DC 20240. These comments will be available at the same time as in Rockville.

FOR FURTHER INFORMATION CONTACT: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, Department of the Interior, Room 4627, 1849 C Street N.W., Washington, DC 20240, Telephone (202) 208–3708 or Merry Elrod, Division of Self-Determination Services, Office of Tribal Activities, Indian Health Service, Room 6A–19, 5600 Fishers Lane, Parklawn Building, Rockville, MD 20857, Telephone (301) 443–6840/1104/1044.

SUPPLEMENTARY INFORMATION: The 1975 Indian Self-Determination and Education Assistance Act gave tribes the authority to contract with the Federal government to operate programs serving their tribal members and other eligible persons. The Act was further amended by the Technical Assistance Act and other Acts, Public Law 98–250; Public Law 100–202; Interior Appropriations Act for Fiscal Year 1988, Public Law 100–446; Indian Self-Determination and Education Assistance Act Amendments of 1988, Public Law 100–472; Indian Reorganization Act Amendments of 1988, Public Law 100–581; miscellaneous Indian Law Amendments, Public Law 101–301; Public Law 101–512; Indian Self-Determination and Education Assistance Act Amendments of 1990, Public Law 101–644; Public Law 102–184; Public Law 103–138; Indian Self-Determination Act Amendments of 1994, Public Law 103–413; and Public Law 103–435. Of these, the most significant were Public Law 100–472 (the 1988 Amendments) and Public Law 103–413 (the 1994 Amendments).

The 1988 Amendments substantially revised the Act in order ''to increase tribal participation in the management of Federal Indian programs and to help ensure long-term financial stability for tribally-run programs.'' Senate Report 100–274 at 2. The 1988 Amendments were also ''intended to remove many of the administrative and practical barriers that seem to persist under the Indian Self-Determination Act.'' Id. at 2. In fashioning the amendments, Congress directed that the two Departments develop implementing regulations over a 10-month period with the active participation of tribes and tribal organizations. In this regard, Congress delegated to the Departments broad legislative rulemaking authority.

Initially the two Departments worked closely with tribes and tribal organizations to develop new implementing regulations, culminating in a joint compromise September 1990 draft regulation reflecting substantial tribal input. Thereafter, however, the two Departments continued work on the draft regulation without any further tribal input. The revised proposed regulation was completed under the previous administration, and the current administration published the proposed regulation (NPRM) for public comment on January 20, 1994, at 59 FR 3166. In so doing, the current administration expressed its concern over the absence of tribal participation in the regulation drafting process in the years following August 1990, and invited tribes to closely review the NPRM for possible revisions.

Tribal reaction to the January 1994 proposed regulation was extremely critical. Tribes, tribal organizations, and national Indian organizations criticized both the content of the NPRM and its length, running over 80 pages in the Federal Register. To address tribal concerns in revising the proposed regulations into final form, the Departments committed to establish a Federal advisory committee that would include at least 48 tribal representatives from throughout the country, and be jointly funded by the two Departments.

In the meantime, Congress renewed its examination into the regulation drafting process, and the extent to which events since the 1988 amendments, including the lengthy and controversial regulation development process, justified revisiting the Act anew. This Congressional review eventually led to the October 1994 amendments. (Similar efforts by tribal representatives to secure amendments to the Act in response to the developing regulations had been considered by Congress in 1990 and 1992.)

The 1994 amendments comprehensively revisit almost every section of the original Act, including amending the Act to override certain provisions in the January 1994 NPRM. Most importantly for this new NPRM, the 1994 amendments also remove Congress' prior delegation to the Departments of general legislative rulemaking authority. Instead, the Departments' authority is strictly limited to certain areas, a change explained in the Senate report that accompanied the final version of the bill:

> Section 105 of the bill addresses the Secretaries' authority to promulgate interpretative regulations in carrying out the mandates of the Act. It amends section 107 (a) and (b) of the Act by limiting the delegated authorization of the Secretaries to

promulgate regulations. This action is a direct result of the failure of the Secretaries to respond promptly and appropriately to the comprehensive amendments developed by this committee six years ago.

* * * * *

Section 105(l) amends § 107(a) by delegating to the Secretary the authority only to promulgate implementing regulations in certain limited subject matter areas. By and large these areas correspond to the areas of concern identified by the Departments in testimony and in discussions. Beyond the areas specified in subsection (a) * * * no further delegated authority is conferred.

Sen. Rep. No. 103–374 at 14. For this reason, the new NPRM covers substantially fewer topics than the January 1994 NPRM. As specified by Congress, the new NPRM is limited to regulations relating to chapter 171 of title 28 of the United States Code, commonly known as the ''Federal Tort Claims Act;'' the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*); declination and waiver procedures; appeal procedures; reassumption procedures; discretionary grant procedures for grants awarded under section 103 of the Act; property donation procedures arising under section 105(f) of the Act; internal agency procedures relating to the implementation of this Act; retrocession and tribal organization relinquishment procedures; contract proposal contents; conflicts of interest; construction; programmatic reports and data requirements; procurement standards; property management standards; and financial management standards. All but two of these permitted regulatory topics—discretionary grant procedures and tribal organization relinquishment procedures—are addressed in this NPRM.

The 1994 amendments also require that, if the Departments elect to promulgate regulations, the Departments must use the notice and comment procedures of the Administrative Procedure Act, and must promulgate the regulations as a single set of regulations in title 25 of the Code of Federal Regulations. Section 107(a)(2). Finally, the 1994 amendments require that any regulations must be developed with the direct participation of tribal representatives using as a guide the Negotiated Rulemaking Act of 1990. This latter requirement is also explained in the accompanying Senate Report:

To remain consistent with the original intent of the Act and to ensure that the input received from the tribes and tribal organizations in the regulation drafting process is not disregarded as has previously been the case, section 107 also has been amended by adding a new subsection (d), requiring the Secretaries to employ the negotiated rulemaking process.

Sen. Rep. No. 103–374 at 14. As a result of the October 1994 amendments and earlier initiatives previously discussed, the Departments chartered a negotiated rulemaking committee under the Federal Advisory Committee Act. The committee's purpose is to develop regulations that implement amendments to the Act.

The committee has 63 members. Forty-eight of these members represent Tribes—two tribal members from each BIA area and two from each IHS area. Nine members are from the Department of the Interior and six members are from the Department of Health and Human Services. Additionally, four individuals from the Federal Mediation and Conciliation Service served as facilitators. The committee is co-chaired by four tribal representatives and two Federal representatives. While the committee is much larger than usually chartered under the Negotiated Rulemaking Act, its larger size was justified due to the diversity of tribal interests and programs available for contracting under the Act.

The committee agreed to operate based on consensus decisionmaking. The Departments committed to publish all consensus decisions as the proposed rule. The committee further agreed that any committee member or his/her constituents could comment on this proposed rule.

In order to complete the regulations within the statutory timeframe, the committee divided the areas subject to regulation among six working groups. The workgroups made recommendations to the committee on whether regulations in a particular area were desirable. If the committee agreed that regulations were desirable, the workgroups developed options for draft regulations. The workgroups presented their options to the full committee, where the committee discussed them and eventually developed the proposed regulations.

The first meeting of the committee was in April of 1995. At that meeting, the committee established six workgroups, a meeting schedule, and a protocol for deliberations. Between April and September of 1995, the committee met five times to discuss draft regulations produced by the workgroups. Each of these meetings generally lasted three days. Additionally, the workgroups met several more times between April and September to develop recommendations for the committee to consider.

The policy of the Departments is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. All of the sessions of the committee were announced in the Federal Register and were open to the public.

The Departments commend the ability of the committee to cooperate and develop a proposal that addresses the interests of the tribes and the Federal agencies. This negotiated rulemaking process is a model for developing successful Federal and tribal partnerships in other endeavors. The consensus process allowed for true bilateral negotiations between the Federal government and the tribes in the best spirit of the government-to-government relationship.

In developing regulatory language, full committee consensus was reached on the regulations which follow under subparts ''A'' through ''P.'' In addition, at the request of tribal and Federal representatives, the Secretaries have agreed to propose and publish additional introductory materials under subpart ''A.'' Where the full committee could not reach consensus as defined in its protocol, this preamble includes a brief description of the issue, along with the Federal and tribal positions when available. The public is invited to comment on these issues as well as on the proposed regulations.

Where the tribal position is stated it reflects dissatisfaction with proposed resolution of the issues by the Federal representatives and preference for alternative language as put forth by the tribes. Where the Federal position is stated, it represents the official views of the Departments, as expressed by the designated Federal officials. The paragraphs below address five areas of disagreement within the committee. The five areas are: internal agency procedures, confidentiality, conflicts of interest, and two areas of Secretarial policy.

Key Areas of Disagreement

Internal Agency Procedures

The tribal representatives of the negotiated rulemaking committee believe the Act requires that provisions concerning the internal procedures of the Departments of the Interior and Health and Human Services must be drafted by the negotiated rulemaking committee and should be included in the final regulation.

The tribal representatives' goal is to have uniform procedures among the Federal agencies for the implementation and interpretation of the Act and these regulations. Further, tribal representatives believe that, unless the internal agency procedures subpart is

included in these regulations, the Federal agencies may use internal agency procedures to limit the effect of the 1994 amendments of the Act.

Previously, in the House and Senate Reports that accompanied the final version of the 1994 bill each committee observed:

> The recently promulgated proposed regulations severely undercut Congress' intent in the original Act and those amendments to liberalize the contracting process and to put these programs firmly in the hands of the tribes. The proposed January 1994 regulations erect a myriad of new barriers and restrictions upon contractors rather than simplifying the contracting process and freeing tribes from the yoke of excess Federal oversight and control.

Sen. Rep. No. 103–374 at 14; Cong. Rec. at H–11145 (daily ed. Oct. 6, 1994). Tribal representatives believe that internal agency procedures may be used in this same way again if allowed to be created outside the negotiated rulemaking process.

For purposes of soliciting comments the tribal representatives recommend the following regulation provision to address the issue of internal agency procedures:

Internal Agency Procedures

A. No internal agency procedure, policy, or other issuance which interprets the meaning or application of any provision of the Act or these regulations shall be binding upon an Indian tribe or tribal organization. Any such issuance shall instead:

(1) Fall within the specific area of delegated rulemaking authority specified in section 107(a) of the Act; and

(2) Be promulgated pursuant to the negotiated rulemaking and notice and comment procedures of the Act.

B. No issuance which fails to meet these criteria shall have any force or effect, or be binding on any tribe or tribal organization.

C. No internal agency procedure and no Departmental official or employee shall impose any requirements, limitation, or condition on any tribe or tribal organization relating to any matter arising under the Act. All such matters shall be governed exclusively by the Act and these regulations.

The Federal position is that a comprehensive manual for the internal management of self-determination contracts should not be developed through the formal rulemaking process. Internal agency procedures are more appropriately developed outside the negotiated rulemaking process, to allow flexibility in addressing practical considerations which arise in the field, and to allow maximum participation from those agency officials who bear much of the responsibility for implementing the Act to its fullest capability. The Federal position supports a joint tribal and Federal commitment to work together to generate a procedural manual which will promote the purposes underlying the Act and facilitate contracting by Indian tribes and tribal organizations.

One goal of the full committee is to have uniform procedures for the implementation and interpretation of the act and these regulations which apply to all Federal agencies which administer contracted programs. The Federal members of the committee propose that the parties formally agree to work together to develop a manual which guides all contracting agencies through the contracting process. This is consistent with the position taken by the work group charged with making recommendations regarding internal agency procedures.

To that end, Federal committee members would commit to a firm time line within which to produce a manual. In addition, the Federal government would seek meaningful consultation throughout the development process from representatives of Indian tribes and tribal organizations.

Conflicts of Interest

The Federal negotiators feel strongly that regulatory provisions concerning conflicts of interest are needed, especially for the protection of allottees. The Federal proposal would address two types of conflicts: Conflicts of the tribe or tribal organization itself (an ''organizational conflict'') and conflicts of individual employees involved in trust resource management. The Secretary of the Interior owes a fiduciary duty to trust beneficiaries that cannot be compromised by contracting to rely on the recommendations and reports of persons with financial interests adverse to those of the trust beneficiary (the individual allotted Indian), whether the conflict be that of the tribe or that of an individual tribal employee.

With respect to organizational conflicts that become known after contract negotiation, the proposal would require the tribe to disclose the conflict and negotiate a means of avoiding, mitigating, or neutralizing the conflict. The conflict would be one between the tribe and individual Indians, one between the tribe and the United States, or one between the tribe and others relying on the work to be performed under the contract. The only conflicts that would be regulated would be those arising from the tribe/tribal organization's interests associated with land, resources, trust property, or rights of use, that could impair the objectivity of the tribe/tribal organization in performing the contract. The proposal does not address organizational conflicts known to the Secretary at the time of contract approval. Those can and should be addressed in negotiation of the contract.

With respect to contracts for trust resource management, the proposal would require the tribe/tribal organization to adopt and enforce standards of conduct to prohibit officers, employees or agents (including subcontractors) from participating in the review of trust transactions with those nontribal entities in which they have a financial interest, employment, or competitive relationship. The standards would also prohibit acceptance of gratuities.

Contract provisions may be negotiated to take the place of the proposed regulation. The regulation is proposed to ensure that some provision will be made to avoid or mitigate conflicts, whether by rule or contract terms. Such provisions will permit the Secretary of the Interior to contract for work supportive of his trust management functions, and avoid the potential for breach of trust liability or the need to decline on grounds that ''adequate protection of trust resources is not assured.''

The Federal proposal is as follows:

A. What is an organizational conflict? An organizational conflict exists when your legal, financial, or resource use interests (arising from land, interests in land or resources, trust property, or rights of use) conflict with those of the United States or any person reliant on the work to be performed under the contract (including an Indian allottee). An organizational conflict only arises, however, when your interest is such that it may impair your objectivity in performing work under the contract.

B. What must a tribe or tribal organization do if an organizational conflict arises under a contract? You must disclose the conflict to the Secretary and propose a means of avoiding, mitigating, or neutralizing the conflict, if the conflict had not been known to the Secretary when the contract was negotiated. You must proposed a means of avoiding, mitigating, or neutralizing the conflict (such as review of your work by a third party,) that is acceptable to the Secretary.

C. What kinds of organizational conflicts must be addressed? You must address conflicts between the tribe and the United States, such as when the tribe has a contract for realty services and a contaminant survey must be undertaken in connection with its request that the United States take land into trust. A conflict would exist because it would be in the tribe's interest for the United States to take the land into trust, despite the presence of contaminants, because liability for cleanup would be transferred to the United States as holder of legal title.

You must address conflicts between a tribe and individual trust beneficiaries. For

example, a tribe may hold a contract for real estate services, including appraisals. If the tribe seeks to buy or lease lands from an allottee, its performance of the appraisal of such allotted lands would present such a conflict. To fulfill its trust responsibility to the individual Indian landowner, the United States would expect the tribe to hire an independent appraiser to perform (or review) the appraisal.

The tribe may have conflicting interests with other persons who rely on its performance under the contract. For example, a cadastral survey may determine the boundaries between tribal lands and those of individual Indians, State governments, or private landowners. In that case, the survey should be reviewed by an independent third party to assure its objectivity.

D. When must the tribe or tribal organization regulate its employees or subcontractors to avoid a conflict of interest? You must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

E. What must the Standards of Conduct prohibit or mitigate? The Standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions with a party in which such persons have a financial interest or an employment relationship, or those in direct competition with such a party. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the tribe) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies of the violation of the standards.

F. What types of conflicts involving tribal employees or contractors would have to be regulated by the tribe? The tribe would need a tribally-adopted mechanism to ensure that no officer or employee reviews a trust transaction in which that person has a personal, financial, or employment interest that conflicts with that of the trust beneficiary, the tribe or allottee. For example, a tribal employee who works part-time for an oil company should not be assigned to inspect an oil and gas lease held by that oil company to assure absolute loyalty to the Indian beneficiary. For similar reasons, such an employee should not inspect the leases held by the oil company's competitors.

Similarly, a tribe which intends to subcontract the performance of trust-related functions should avoid awarding a contract for oil and gas royalty audits to an accounting firm that also derives revenue from the oil and gas companies being audited.

G. May a tribe elect to negotiate the contract provisions on conflict of interest to take the place of this regulation? Yes. A tribe and the Secretary may agree to contract provisions that address the conflict of interest issues specific to the program and activities contracted. Agreed-upon contract provisions shall be followed, rather than this regulation.

The tribal representatives of the negotiated rulemaking committee oppose the regulatory provisions presented by the Federal officials in the area of ''conflict of interest,'' except those contained in § 900.48(6) (Procurement Management).

Throughout the meetings two other forms of ''conflict of interest'' regulations have been proposed: organizational conflicts of interest and personal conflicts of interest. The tribal position on each of these proposals is discussed below.

Organizational Conflicts of Interest

Tribal members are of the view that, while this issue has been discussed throughout the meetings, a clear and concise federal proposal has not been set forth.

The tribal representatives believe the effect of the Federal proposal is to shift Secretarial trust responsibilities to tribes through regulation without financial support for the undertaking. Further, for the nearly 20 years that self-determination contracting has occurred under the Act, no similar regulation has been needed.

Another concern of tribal representatives is that the Interior Department has no such provisions controlling its own activities and that examples of similar conflicts frequently occur within Federal operation of programs.

For these reasons, tribal representatives strongly believe that no regulation is necessary in this area of so-called organizational conflicts of interest.

Personal Conflicts of Interest

In this area, the Federal representatives seek to require that tribes and tribal organizations adopt internal procedures as a regulatory scheme to address conflicts of interest by their employees, agents, and officials when conducting transactions related to trust resources.

Tribal representatives are highly offended by the nature of the Federal proposal to dictate internal tribal operations through these regulations. Further, the Federal officials appear to presume that the procedures curently employed by tribes and tribal organizations are insufficient.

To the extent some form of regulation is needed in the area of personal conflicts of interest involving trust resource transactions, a revised version of § 900.48(b) might be explored and commented upon. Alternatively, tribal representatives propose that these conflicts of interest be subject to negotiation of the parties in each contract.

Confidentiality

The Federal position is that a provision relating to the confidentiality of information obtained by Indian tribes and tribal organizations relating to trust resources needs to be included in this subpart, consistent with the Federal government's trust obligation to individual Indians to keep such information confidential. The following paragraph is proposed to address this issue:

> A contractor shall hold confidential all information obtained from any person relating to the financial affairs of individual Indians, lessees, or permittees, and shall not release this information without the individual's consent or as otherwise required by law.

Tribal committee members note that tribes have long maintained their own confidentiality procedures. Tribal committee members believe the proposed Federal language is offensive, and an unnecessary issue to be regulated.

Secretarial Policy

The committee has not reached a consensus in two Secretarial policy areas.

First, the provision regarding Federal program guidelines, manuals, or policy directives is drawn largely from paragraph 1(b)(11) of the model contract in section 108(c)of the Act. Tribal committee members are of the view that the statutory provision is a non-exclusive list of the types of Federal documents or issuances that may not be imposed upon tribes, and point to the statement in the Senate and House reports that other ''unpublished requirements'' may not be imposed upon tribes. They therefore seek the addition of other similar documents such as ''advisories, notices, letters, correspondence and reporting requirements.'' Federal representatives oppose adding any other items to the statutory list.

The Regulation does not include a provision advanced by tribal committee members that would adopt, as a Secretarial policy, the policy that Federal laws and regulations will be interpreted in a manner that will facilitate the inclusion of programs in contracts authorized by the Act. Tribal committee members view such a policy as within the Secretary's legal authority and consistent with the strong policy of the Act promoting tribal contracting activities.

Federal committee members are of the view such a policy may be contrary to

law and beyond the Secretary's authority, since the laws being interpreted may not necessarily be for the benefit of Indians, and since specific authority for such a provision is included in Titles III and IV (self-governance) of the Act, but not Title I.

Other areas of disagreement are noted in the summary of regulations below.

Summary of Regulations

The narrative below is keyed to specific subparts of the proposed rule.

Subpart A—Policy

This subpart contains key congressional policies contained in the Act and adds several Secretarial policies that will guide the Secretaries' implementation of the Act.

Subpart B—Definitions

Subpart B sets forth definitions for key terms used in the balance of the regulations. Terms unique to one subpart are generally defined in that subpart, rather than in subpart B.

Subpart C—Contract Proposal Contents

Subpart C contains provisions relating to initial contract proposal contents. In this area, the committee opted to have minimal regulations. The proposed regulation governing initial contract proposal contents essentially consists of a checklist of 13 items that must be addressed in a proposal. In addition, the proposed regulation contains a provision relating to the availability of technical assistance to assist Indian tribes and tribal organizations in preparing a contract proposal, and a provision relating to the identification of Federal property that the tribe or tribal organization intends to use during contract performance.

Subpart D—Review and Approval of Contract Proposals

Although this topic is part of the declination process, it has been pulled out for separate treatment to facilitate a clearer understanding of the entire contracting process. In this area, the committee opted to have minimal regulations. The proposed regulation governing review and approval of contract proposals details what the Secretary must do upon receiving a contract proposal, the time frames applicable to Secretarial review, how the 90-day review period can be extended, and what happens if a proposal is not declined within the 90-day period.

Subpart E—Declination Procedures

The proposed regulation governing declination procedures implements Section 102 (a)(2), (a)(4), (b) and (d) of the Act. The proposed regulation restates the statutory grounds for declining a contract proposal, clarifies that a proposal cannot be declined based on any objection that will be overcome through the contract, and details procedures applicable for partial declinations. The proposed regulation also informs Indian tribes and tribal organizations of the requirements applicable to the Secretary when a declination finding is made, contains provisions for technical assistance to Indian tribes and tribal organizations to avoid a declination finding, and to overcome stated declination grounds after a declination finding is made.

The advisory committee did not reach consensus on how to address contract renewal proposals. Tribal representatives on the advisory committee proposed to exempt an Indian tribe's or tribal organization's contract renewal proposal from being subjected to declination if the renewal proposal is substantially similar to the Indian tribe's or tribal organization's prior contract. Tribal representatives are of the view that if the Secretary wishes to take back control of a program, the Secretary should follow the Act's ''reassumption'' procedures set forth in section 109 of the Act.

It is the Federal position that section 102(a)(2) of the Act was amended in 1994 to specifically subject contract renewal proposals to the declination criteria, and that nowhere in the Act, as amended, is there a specific declination exemption for contract renewal proposals that are substantially similar to an expiring contract.

With respect to the declination document disclosure provisions of § 900.27(c), tribal committee members are of the view the disclosure obligation should extend to documents that do not support the decision, in addition to documents that do. Federal committee members oppose such an expansion and note that, if an appeal is taken, such documents will eventually be produced in the discovery process.

Nothing in this regulation is intended to change the IHS's current practice of not reviewing the renewal of a term contract for declination issues where no material or significant changes to the scope or funding of a program, service, activity, or function has been proposed by the tribe or tribal organization.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

Subpart F contains provisions relating to the following management standards: (1) Financial Management; (2) Procurement Management and (3) Property Management. In all of these areas the advisory committee designed minimal regulations that focus on the minimum standards for the performance of the three management systems used by Indian tribes and tribal organizations when carrying out self-determination contracts.

In drafting subpart F, the committee reviewed OMB Circular A–102 and the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the ''common rule''). Following this review and analysis, the attached regulations were developed to implement the Act and best meet the needs of Indian tribes and tribal organizations. Central to the proposed regulation is a distinction between the standards that are the subject of this regulatory process, and the management system operations that implement those standards. The standards contained in this subpart are designed to be the targets which the Indian tribe's and tribal organization's management systems should be designed and implemented to meet. The management systems themselves are to be designed by the Indian tribe or tribal organization.

Section 900.36 contains general provisions which apply to all management system standards contained in this subpart. The proposed regulations include provisions that: (1) Identify the management systems that are addressed; (2) set forth the requirements imposed; (3) limit the applicability of OMB circulars; (4) provide that the Indian tribe or tribal organization has the option to impose these standards upon sub-contractors; (5) identify the difference between a standard and a system; and (6) specify when the management standards and management systems are evaluated.

Section 900.41 contains the minimum standards for financial management systems. The proposed regulations establish the minimum requirements for seven elements including: (1) Financial reports; (2) accounting records; (3) internal control; (4) budget control; (5) allowable costs; (6) source documentation and (7) cash management.

Section 900.47 contains the minimum standards for procurement management systems. The proposed regulations establish the minimum requirements for seven elements: (1) To ensure that vendors and sub-contractors perform in accordance with the terms of purchase orders or contracts; (2) to require the Indian tribe or tribal organization to maintain standards of conduct for employees award contracts to avoid any

conflict of interest; (3) to review proposed procurements to avoid buying unnecessary or duplicative items; (4) to provide full and open competition, to the extent feasible in the local area, subject to the Indian preference and tribal preference provisions of the Act; (5) to ensure that procurement awards are made only to entities that have the ability to perform consistent with the terms of the award; (6) to maintain records on significant history of all major procurements; and (7) to establish that the Indian tribe or tribal organization is solely responsible for processing and settling all contractual and administrative issues arising out of a procurement. In addition, the proposed regulation provides that each Indian tribe or tribal organization must establish its own small purchase threshold and definition of ''major procurement transactions''; establish minimum requirements for sub-contract terms, and include a provision in its subcontracts that addresses the application of Federal laws, regulations and Executive Orders to subcontractors.

Section 900.52 contains the minimum requirements for property management systems. The proposed regulations address the standards for both Federally-titled property and property titled to an Indian tribe or tribal organization, with differences based upon who possesses title to the property. As a general rule the requirements for property where the Federal agency retains title are higher than requirements for property where the Indian tribe or tribal organization holds the title. The proposed regulation addresses elements including: (1) Property inventories; (2) maintenance of property; (3) differences in inventory and control requirements for property where the Federal agency retains tile to the property; and (4) the disposal requirements for Federal property.

Subpart G—Programmatic Reports and Data Requirements

This brief subpart provides for the negotiation of all reporting and data requirements between the Indian tribe or tribal organization and the Secretary. Failure to reach an agreement on specific reporting and data requirements is subject to the declination process. Although the Indian Health Service proposes to develop a uniform data set, that data set will only be used as a guide for negotiation of specific requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

Section 105(l) of the Act authorizes the Secretary to lease tribally-owned or tribally-leased facilities and allows for the definition of ''other reasonable expenses'' to be determined by regulation. This subpart provides a non-exclusive list of cost elements that may be included as allowable costs under a lease between the Indian tribe or tribal organization and the Secretary. It further clarifies that except for ''fair market rental,'' the same types of costs may be recovered as direct or indirect charges under a self-determination contract.

Subpart I—Property Donation Procedures

This subpart establishes procedures to implement section 105(f) of the Act. Section 900.85 provides a statement of the purpose of the subpart and explains that while the Secretary has discretion in the donation of excess and surplus property, ''maximum'' consideration must be given to an Indian tribe's or tribal organization's request.

This subpart also contains a provision for the Secretary to elect to reacquire property under specific conditions. It clarifies that certain property is eligible for operation and maintenance funding, as well as for replacement funding on the same basis as if title to the property were held by the United States.

Section 900.87 provides for the transfer of property used in connection with a self-determination contract. It provides slightly different procedures for personal property versus real property furnished before the effective date of the 1994 amendments and another procedure for property furnished after the enactment of the 1994 amendments.

Sections 900.91 and 900.92 address section 105(f)(2)(A) of the Act which provides that a tribal contractor automatically takes title to property acquired with contract funds unless an election is made not to do so. It also addresses the process for requesting that real property be placed ''in trust.''

Section 900.97 addresses BIA and IHS excess property donation while § 900.103 addresses excess or surplus property from other Agencies.

Subpart J—Construction Contracts

Subpart J addresses the process by which an Indian tribe or tribal organization may contract for construction activities or portions thereof. The subpart is intentionally written to inform readers of the breadth and scope of construction contracting activities conducted by the Departments, and provides opportunities for Indian tribes or tribal organizations to choose the degree to which they wish to participate in those activities. The subpart provides for extensive cooperation and sharing of information between the Departments and an Indian tribe or tribal organization throughout the construction process. The subpart provides for different construction contracting methods, such as award of contracts through subpart J, award of contracts through section 108 of the Act, and award of grants in lieu of contracts depending on the degree of Federal involvement and the phase(s) of construction activities for which the Indian tribe or tribal organization seeks to contract.

The construction process is described in phases, starting with a preplanning phase, followed by a planning phase, a design phase, and a construction phase. Provisions are included so an Indian tribe or tribal organization can seek a contract through section 108 of the Act for the planning phase and for construction management services. It is not required that these functions be pursued through a section 108 contract, and if the Indian tribe or tribal organization so elects these activities can be part of a subpart J contract.

Definitions are provided that are specific to this subpart. The provisions contained in the subpart regarding construction management services provide an important participative process in construction activities for Indian tribes or tribal organizations that seek a voice in securing projects but do not wish to take upon themselves full responsibility for the entire construction process.

The subpart establishes new procedures to facilitate tribal contracting, through such measures as tribal notification, a tribal right of first refusal, and other provisions.

The subpart promotes the exploration of alternative contracting methods, and eliminates the applicability of the Federal acquisition regulations except as may be mutually agreed to by the parties.

The subpart describes the process for negotiating a construction contract, including the process for arriving at a fair and reasonable price, and details the process for resolving disagreements in the contracting process. The subpart also sets forth minimum requirements for contract proposals, and details the respective roles of tribes and the Secretary.

The subpart promotes tribal flexibility in several areas, including through periodic payments at least than quarterly, and the payment of contingency funds to be administered by the tribal contractor.

Subpart K—Waiver Procedures

The proposed regulation governing waiver procedures implements section 107(e) of the Act, which authorizes the Secretary to make exceptions in the regulations promulgated to implement the Act or to waive such regulations under certain circumstances. In addition section 107(e) of the Act provides that in reviewing waiver requests, the Secretary shall follow the time line, findings, assistance, hearing, and appeal procedures set forth in section 102 of the Act. The proposed regulation explains how an Indian tribe or tribal organization applies for a waiver, how the waiver request is processed, the applicable timeframes for approval or declination of waiver requests, and whether technical assistance is available. In addition, the proposed regulation restates the declination criteria of section 102 of the Act, which apply to waiver requests, and specifies that a denial of a waiver request is appealable under subpart L of these proposed regulations. Finally, the proposed regulation implements section 107(b) of the Act by providing a process for a determination by the Secretary that a law or regulation has been superseded by the provisions of the Indian Self-Determination Act, as amended.

Subpart L—Appeals (Other Than Emergency Reassumption and Suspension, Withholding or Delay in Payment)

The advisory committee decided to develop substantive regulations governing appeals of pre-award decisions by Federal officials. The proposed regulation does not govern appeals of post-award decisions subject to the Contract Disputes Act, since the provisions governing disputes under a contract can be found in subpart N of these proposed regulations. The proposed regulation governing pre-award appeals implements sections 102(b), 102(e), and 109 of the Act, as well as various other provisions requiring the Secretary to provide an administrative appeals process when making certain decisions under the Act. It provides a roadmap to the appeals process for Indian tribes and tribal organizations.

The proposed regulation is divided in two parts: Part I concerns appeals from decisions relating to declination of a proposal, an amendment of a proposal, or a program redesign; non-emergency reassumption decisions; decisions to refuse to waive regulations under section 107(e) of the Act; disagreements over reporting requirements; decisions relating to mature status conversions; and a catchall provision relating to any other pre-award decisions except Freedom of Information Act appeals, and decisions relating to the award of discretionary grants under section 103 of the Act. Part II concerns decisions relating to emergency reassumptions under section 109 of the Act and decisions relating to suspension, withholding, or delay of payments under section 106(l) of the Act.

The proposed regulation allows for an informal conference to avoid more time-consuming and costly formal hearings, but delineates the appeal process available to Indian tribes and tribal organizations that are either unhappy with the results of the informal conference or who choose to bypass the informal process altogether. The proposed regulation also states that an Indian tribe or tribal organization may go directly to Federal district court rather than exhaust the administrative appeal process under this proposed regulation.

Under the proposed regulation, all appeals must be filed with the Interior Board of Indian Appeals. Hearings on the record are conducted by an Administrative Law Judge of the Department of the Interior's Office of Hearings and Appeals, Hearings Division, who renders a recommended decision. Objections to this recommended decision may be filed either with the Interior Board of Indian Appeals, if the case relates to a Department of the Interior decision, or with the Secretary of Health and Human Services, if the case relates to the Department of Health and Human Services.

Part II contains somewhat similar provisions concerning emergency reassumption and suspension decisions, but these decisions are treated separately because of the statutory requirement that a hearing on the record be held within ten days of the Secretary's notice to immediately rescind and reassume a program, or a notice of intent to suspend, withhold, or delay payment under a contract.

Subpart M—Federal Tort Claims Act Coverage

Coverage of the Federal Tort Claims Act (FTCA) has been extended to Indian tribes, tribal organizations and Indian contractors carrying out contracts, grants, and cooperative agreements under the Act. This subpart explains which tort claims are covered by the FTCA and which tort claims are not covered by the FTCA for both medical and non-medical related claims. It also provides for tribal assistance in giving notice of tort claims to the Federal agency involved, and in providing assistance during the administrative claim or litigation process.

Subpart N—Post-Award Contract Disputes

Under section 110(d) of the Act, the Contract Disputes Act (CDA) applies to post-award contract claims. This subpart explains when a CDA claim can be filed; the contents of a claim; and where to file the claim. It also explains the difference in the handling of claims over $100,000 and those less than that amount.

Subpart O—Retrocession and Reassumption Procedures

Section 107(a)(1) of the Act authorizes the Secretaries to promulgate certain regulations governing retrocession and reassumption procedures. Sections 900.230 through 900.234 define retrocession, what entities are entitled to retrocede, tribal rights for contracting and funding as a result of retrocession, and tribal obligations regarding the return of property to the Secretary after retrocession.

Sections 900.235 through 900.245 explain what is meant by reassumption, the two types of reassumption authorized under the Act, necessary circumstances when using emergency and non-emergency reassumption authority, and Secretarial responsibilities including detailed written notice requirements when reassumption is invoked. The subpart describes a number of activities after reassumption has been completed, such as authorization for ''wind up'' costs, tribal obligations regarding the return of property to the Secretary, and a funding reduction protection.

This rule is a significant regulatory action under Executive Order 12866 and requires review by the Office of Management and Budget.

The Departments certify that this rule will not have significant economic effects on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In accordance with Executive Order 12630 the Department of the Interior and the Department of Health and Human Services have determined that this regulation does not have significant takings implications. The proposed rule does not pertain to the taking of private property interests, nor does it have an effect on private property.

The Department of the Interior and the Department of Health and Human Services have determined that this proposed rule does not have significant Federalism effects under Executive Order 12612 and will not interfere with

the roles, rights, and responsibilities of states.

The Departments of the Interior and Health and Human Services have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

The information collection requirements contained in this proposed regulation have been negotiated between the Departments and tribal representatives through the negotiated rulemaking process. The sections of the regulations requiring the collection of information have been agreed to by the parties in the negotiation. The subparts summarized below contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Departments of the Interior and Health and Human Services have submitted a copy of these sections to the Office of Management and Budget (OMB) for its review:

Subpart C—Contract Proposal Contents

Subpart C contains provisions relating to initial contract proposal contents. The proposed regulation governing initial contract proposal contents essentially consists of a checklist of 13 items that must be addressed in a proposal. These items include basic information about the respondent and program to be contracted, such as: name and address; authorizing resolution; date of submission of proposal; description of geographical service area; estimated number of Indian people to be served; brief statement of the program, functions, services or activities to be performed; description of the proposed program; financial, procurement, and property management standards; description of reports to be provided; staff qualifications, if any; budget information; and waiver information, if requested.

In addition, the proposed regulation contains a provision relating to the availability of technical assistance for Indian tribes and tribal organizations in preparing contract proposals and a provision relating to the identification of Federal property that the tribe or tribal organization intends to use during contract performance. The parties that would have to comply with the information collection requirements in these proposed regulations are tribal governments or tribal organizations authorized by tribal governments. The Departments need and will use the information to determine eligibility of the applicant, evaluate applicant capabilities, protect the service population and safeguard Federal funds and other resources.

All information is to be collected and reported at the time a tribe makes initial application to contract a program. Annual reporting and recordkeeping burden for this collection of information is estimated to average 34 hours for each response for 50 respondents, including the time for reviewing instructions, seaching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 1,700 hours.

Subpart G—Programmatic Reports and Data Requirements

Subpart G provides for the negotiation of all reporting and data requirements between the Indian tribe or tribal organization and the Secretary. The information collected is directly related to the operation of the program and will be negotiated on a contract by contract basis. The Departments need and will use the information to adequately monitor contract operations to determine if satisfactory services are being provided.

All information is to be collected and reported during the operation of the contract based on the terms negotiated in the contract. Annual reporting and recordkeeping burden for this collection of information is estimated to average 10 hours for each response for 500 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 5,000 hours.

Subpart I—Property Donation Procedures

Subpart I establishes procedures regarding donation of Federal excess and surplus property to tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract. Two areas of this proposed subpart address the procedures to be followed when tribes or tribal organizations wish to acquire excess Bureau of Indian Affairs or Indian Health Service property, and excess or surplus government property from other agencies. The Departments need and use the information to determine what property the tribes want to acquire and how the property will be used.

All information is to be collected and reported when a tribe applies for the identified property. Annual reporting and recordkeeping burden for this collection of information is estimated to average 8 hours for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 800 hours.

Subpart J—Construction Contracts

Subpart J addresses the process by which an Indian tribe or tribal organization may contract for construction activities or portions thereof. The subpart requires the Indian tribe or tribal organization to submit descriptions of standards when proposing to contract a construction project. These standards include use of licensed and qualified architects and engineers; applicable health and safety standards; adherence to applicable Federal, state, local or tribal building codes and engineering standards; structural integrity; accountability of funds; adequate competition for sub-contracting under tribal or other applicable law; the commencement, performance and completion of the contract; adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals); the use of proper materials and workmanship; necessary inspection and testing; and a process for changes, modifications, stop work and termination of the work when warranted. In addition to the above, additional information is required when the tribe or tribal organization is proposing to contract design activities and construction activities.

The parties that would have to submit information under these proposed regulations are tribal governments or tribal organizations authorized by tribal governments. The Departments need and use the information to determine eligibility of the applicant, evaluate applicant capabilities, protect the service population and to safeguard Federal funds and other resources.

All information is to be collected and reported when a tribe makes initial application to contract a construction activity. Annual reporting and recordkeeping burden for this collection of information is estimated to average 80 hours for each response for 30 respondents, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 2,400.

Organizations and individuals who wish to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Interior Desk Officer.

The Departments consider comments by the public on these proposed collections of information in:

—Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

—Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

—Enhancing the quality, usefulness, and clarity of the information to be collected; and

—Minimizing the burden or the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Departments on the proposed regulations.

This rule was drafted by a negotiated rulemaking committee that included representatives of the Departments of the Interior and Health and Human Services and of many tribes and tribal organizations.

List of Subjects in 25 CFR Part 900

Indians; Government contracts; Medical care; Construction; Government property management; financial management; Leasing; Tort claims; Appeals.

For the reasons given in the preamble, the Departments of the Interior and Health and Human Services propose to establish a new chapter V in title 25 of the Code of Federal Regulations consisting of part 900 to read as set forth below.

Dated: December 5, 1995.

Bruce Babbitt,

Secretary of the Interior.

Dated: December 5, 1995.

Donna Shalala,

Secretary of Health and Human Services.

CHAPTER V—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AND INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 900—CONTRACTS UNDER THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

Sec.

Authority: 25 U.S.C. 450f *et seq.*

Subpart A—General Provisions

§ 900.1 Authority.

These regulations are prepared, issued, and maintained jointly by the Secretary of Health and Human Services and the Secretary of the Interior, with the active participation and representation of Indian tribes, tribal organizations, and individual tribal members pursuant to the guidance of the Negotiated Rulemaking procedures required by section 107 of the Indian Self-Determination and Education Assistance Act.

§ 900.2 Purpose and scope.

(a) *General.* These regulations codify uniform and consistent rules for contracts by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementing title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 25 U.S.C. 450 *et seq.*, as amended and sections 1 through 9 preceding that title.

(b) *Programs funded by other Departments and agencies.* Included under this part are programs administered (under current or future law or interagency agreement) by DHHS and the DOI for the benefit of Indians for which appropriations are made to other Federal agencies.

(c) *This part included in Contracts by Reference.* Each contract, including grants and cooperative agreements in lieu of contracts awarded under section 9 of the Act, shall include by reference the provisions of this part, and any amendment thereto, and they are binding on the Secretary and the contractor except as otherwise specifically authorized by a waiver under section 107(e) of the Act.

(d) *Freedom of Information.* Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recording keeping systems of the DHHS or the DOI, or both, records of the Contractors shall not be considered Federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by Indian tribes and tribal organizations.

(e) *Privacy Act.* Section 108(b) of the Indian Self-Determination Act, states that records of the tribal government or tribal organizations shall not be considered Federal records for the purposes of the Privacy Act.

(f) *Information Collection.* The information collection requirements contained in these rules have been approved by the Office of Management and Budget and assigned the following approval numbers: [*Approval numbers*

will appear in this location in the final rule.]

§ 900.3 Policy statements.

(a) *Congressional policy.* (1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of educational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities.

(2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(3) Congress has declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(4) Congress has declared that the programs, functions, services, or activities that are contracted under this Act shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the department that carries out such functions. Contracting of the administrative functions described herein shall not be construed to limit or reduce in any way the funding for any program, function, service, or activity serving any other tribe under the Act or any other law. The Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.

(5) Congress has further declared that each provision of the Act and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding and the related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under the Act, including all related administrative functions, from the Federal Government to the Contractor.

(6) Congress has declared that one of the primary goals of the 1994 amendments to the Act was to minimize the reporting requirements applicable to tribal contractors and to eliminate excessive and burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act.

(7) Congress has declared that there not be any threshold issues which would avoid the declination, contract review, approval, and appeal process.

(8) Congress has declared that all self-determination contract proposals must be supported by the resolution of an Indian tribe(s) as appropriate.

(9) Congress has declared that to the extent that programs, functions, services, and activities carried out by tribes and tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under section 106(a) of the Act, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(b) *Secretarial policy.* (1) It is the policy of the Secretary to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, functions, services and activities, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians and for which funds are appropriated by Congress. The Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal autonomy and flexibility in the administration of such programs.

(2) It is the policy of the Secretary to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Departments' programs administered for the benefit of Indians by providing information on such programs, functions and activities and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Secretary to provide a uniform and consistent set of rules for contracts under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.

(4) The Secretary recognizes that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When an Indian tribe contracts, there is a transfer of responsibility and accountability to the tribal contractor for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract with respect to use of the funds and the satisfactory performance of the programs, functions, services and activities funded under the contract. The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

(5) The Secretary recognizes that tribal decisions to contract or not to contract are equal expressions of self-determination.

(6) The Secretary shall maintain consultation with tribal governments and tribal organizations in the Secretary's budget process relating to programs, functions, services and activities subject to the Act. In addition, on an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and

the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(7) The Secretary is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of tribal governments and extending the applicability of this policy to all operational components within the Department. By fully extending Indian self-determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians because of their status as Indians, it is the Secretary's intent to support and assist Indian tribes in the development of strong and stable tribal governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Secretary to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality.

(8) The Secretary's commitment to Indian self-determination requires that these regulations be liberally construed for the benefit of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-determination and, further, that any ambiguities herein be construed in favor of the tribe or tribal organization so as to facilitate and enable the transfer of services, programs, functions, and activities, or portions thereof, authorized by the Act.

(9) It is the Secretary's policy that no later than upon receipt of a contract proposal under the Act (or written notice of an Indian tribe's or tribal organization's intention to contract), the Secretary shall plan to take such administrative actions, including but not limited to transfers or reductions in force, transfers of property, and transfers of contractible functions, as may be necessary to insure a timely transfer of responsibilities to Indian tribes and tribal organizations.

(10) It is the policy of the Secretary to make available to Indian tribes and tribal organizations all administrative functions that may lawfully be contracted under the Act, employing methodologies consistent with the methodology employed with respect to such functions under titles III and IV of the Act.

§ 900.4 Effect on existing tribal rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility;

(c) Mandating an Indian tribe to apply for a contract(s) or grant(s) as described in the Act; or

(d) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

§ 900.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

Except as specifically provided in the Act, or as specified in Subpart J, a Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

Subpart B—Definitions

§ 900.6 Definitions.

Unless otherwise provided in this Part:

Act means § 1 through 9, and Title I of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Annual funding agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to a tribe or tribal organization under the Act.

Appeal means a request by an Indian tribe or tribal organization for an administrative review of an adverse Agency decision.

Awarding official means any person who by appointment in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Contract appeals board means the Interior Board of Contract Appeals.

Contractor means an Indian tribe or tribal organization to which a contract has been awarded.

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department(s) means the Department of Health and Human Services (HHS) or the Department of the Interior (DOI), or both.

IHS means the Indian Health Service of the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal Agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more that one contract objective or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.

Real property means any interest in land together with the improvements structures, and fixtures and appurtenances thereto.

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization.

Retrocession means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

Secretary means the Secretary of Health and Human Services (HHS) or the Secretary of the Interior (DOI), or both (and their respective delegates).

Tribal organization means the recognized governing body of any Indian tribe; any legally established

organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Trust resources means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

Subpart C—Contract Proposal Contents

§ 900.7 What technical assistance is available to assist in preparing an initial contract proposal?

The Secretary shall, upon request of a tribe or tribal organization and subject to the availability of appropriations, provide technical assistance on a non-reimbursable basis to such tribe or tribal organization to develop a new contract proposal or to provide for the assumption by the tribe or tribal organization of any program, service, function, or activity (or portion thereof) that is contractible under the Act.

§ 900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) the full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

(b) If the tribal organization is not an Indian tribe, the proposal must also include:

(1) a copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).

(2) the full name(s) of Indian tribe(s) with which the tribal organization is affiliated.

(c) the full name(s) of the Indian tribe(s) proposed to be served.

(d) a copy of the authorizing resolution from the Indian tribe(s) to be served.

(1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference to that resolution.

(e) an identification and signature of the authorized representative of the tribe or tribal organization submitting the contract proposal.

(f) the date of submission of the proposal.

(g) a brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including:

(1) a description of the geographical service area, if applicable, to be served.

(2) the estimated number of Indian people who will receive the benefits or services under the proposed contract.

(3) a description of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

(4) a description of the proposed program and financial, procurement, and property management standards.

(5) an identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.

(6) a description of any proposed redesign of the programs, services, functions, or activities to be contracted.

(7) minimum staff qualifications, if any.

(h) a budget which includes at a minimum:

(1) an identification of the funds requested under section 106(a)(1) of the Act, including tribal shares, if any, from any departmental local, Area, regional, or national level, presented as follows:

(i) for the IHS, by budget subactivity specified in the annual budget justification, as may be modified by Congressional action (e.g., hospitals and clinics, dental health, community health representatives, mental health, etc.);

(ii) for the BIA, by programs specified in the annual budget justification, as may be modified by Congressional action (e.g., social services, forestry, roads, and law enforcement); and

(iii) for non-BIA DOI bureaus and offices, by the lowest level of detail set out in the annual budget justification for the bureau or office (as may be modified by Congressional action).

(2) the amount of direct contract support costs, including one-time or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);

(ii) Equipment;

(iii) Materials and Supplies;

(iv) Travel;

(v) Subcontracts; and

(vi) Other appropriate items of cost.

(3) where the Indian tribe or tribal organization proposes to recover indirect contract support costs, the budget must include either:

(i) a copy of the most recent negotiated indirect cost rate agreement; or

(ii) an estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

(4) to the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount and time period covered or to be covered; and

(5) an identification of anticipated sources of other funding relied upon to carry out the programs, services, functions, or activities specified in the contract proposal.

(i) the proposed starting date and term of the contract.

(j) in the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.

(k) the extent of any planned use of Federal personnel and Federal resources.

(l) any proposed waiver(s) of these regulations.

§ 900.9 May the Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in § 900.8(b)?

No.

§ 900.10 What should a tribe or tribal organization that is proposing a contract do about specifying the Federal property that the tribe or tribal organization may wish to use in carrying out the contract?

The Indian tribe or tribal organization is encouraged to provide the Secretary, as early as possible, with:

(a) a list of the following Federal property intended for use under the contract:

(1) equipment;

(2) furnishings;

(3) facilities;

(4) and other property.

(b) a statement of how the Indian tribe or tribal organization will obtain each item by transfer of title under § 105(f)(2) of the Act and section 1(b)(8) of the model agreement set forth in section 108(c) of the Act, through a temporary use permit, similar arrangement, or otherwise; and

(c) where equipment is to be shared by contracted and non-contracted programs, services, functions, or activities, a proposal outlining proposed equipment sharing or other arrangements.

§ 900.11 Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, an Indian tribe or tribal organization should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least 90 days in advance of the expiration date of the contract or existing annual funding agreement. The proposal shall provide budget information in the same detail and format as the original proposal and may also identify any significant proposed changes.

Subpart D—Review and Approval of Contract Proposals

§ 900.12 What does this subpart cover?

This subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

§ 900.13 What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

(a) within five days notify the applicant in writing that the proposal has been received;

(b) within 15 days notify the applicant in writing of any missing items required by § 900.8 and that the items be submitted within 15 days of receipt of the notification; and

(c) review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

§ 900.14 How long does the Secretary have to review and approve or decline a proposal?

The Secretary has 90 days after receipt of a proposal to review and approve or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

§ 900.15 Can the statutory 90-day period be extended?

Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

§ 900.16 What happens if a proposal is not declined within 90 days after it is received by the Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under § 900.15) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period.

Subpart E—Declination Procedures

§ 900.18 What does this subpart cover?

This subpart explains how and under what circumstances the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations. For annual funding agreements, see § 900.30.

§ 900.19 When can a proposal be declined?

As explained in §§ 900.14 and 900.15, a proposal can only be declined within 90 days after the Secretary receives the proposal, unless that period is extended with the voluntary and express written consent of the Indian tribe or tribal organization.

§ 900.20 For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

(a) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) adequate protection of trust resources is not assured;

(c) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) the program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.21 can the Secretary decline a proposal where the Secretary's objection could be overcome through the contract?

No. The Secretary may not decline to enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.

§ 900.22 Can a contract proposal for an Indian tribe's or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified above?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary's annual report to Congress under section 106(c)(6) of the Act.

§ 900.23 What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in § 900.20, subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.24 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposes in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposes a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 106(a) of the Act, or approve a level of funding that is authorized under section 106(a) of the Act. As noted in § 900.23, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.25 If an Indian tribe or tribal organization elects to contract for a severable portion of a proposal, does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No, but the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.

§ 900.26 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested technical assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.

§ 900.27 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required:

(a) to advise the Indian tribe or tribal organization in writing of the Secretary's objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in § 900.20 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, when appropriate, any documents relied on in making the decision; and

(b) to advise the Indian tribe or tribal organization in writing of the rights described in § 900.29.

(c) to provide tribes and tribal organizations within 20 days of issuing a declination decision under § 102(a), all documents that currently exist that support the declination decision. The provision of these documents does not preclude or limit the Secretary from providing or producing additional documents to be used in an appeal as evidence to support any findings identified in the declination decision (subject to any discovery time limitation or other evidentiary rules imposed by the Administrative law judge).

§ 900.28 When the Secretary declines all or a portion of a proposal, is the Secretary required to provide an Indian tribe or tribal organization with technical assistance?

Yes. The Secretary shall provide additional technical assistance to overcome the stated objections, in accordance with section 102(b) of the Act, and shall provide any necessary requested technical assistance to develop any modifications to overcome the Secretary's stated objections.

§ 900.29 When the Secretary declines all or a portion of a proposal, is an Indian tribe or tribal organization entitled to any appeal?

Yes. The Indian tribe or tribal organization is entitled to an appeal on the objections raised by the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are in subpart L of these regulations. Alternatively, at its option the Indian tribe or tribal organization has the right to sue in Federal district court to challenge the Secretary's decision.

§ 900.30 Can the Secretary decline an Indian tribe or tribal organization's proposed successor annual funding agreement?

No. If it is substantively the same as the prior annual funding agreement (except for mandatory funding increases or budget reductions as provided in section 106(b) of the Act) the Secretary shall approve and fund, and may not decline, any portion of a successor annual funding agreement. Any portion of an annual funding agreement proposal which is not substantively the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity) is subject to the declination criteria and procedures in Subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

General

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe's or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the ''common rule'' apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the ''common rule'' that apply to self-determination contracts are the provisions adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§ 900.38 Do these standards apply to the sub-contractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its sub-contractors when carrying out a self-determination contract.

§ 900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the ''what'' that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are ''how'' the activity will be accomplished.

§ 900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A–128.

Standards for Financial Management Systems

§ 900.41 What are the general financial management system standards that apply to an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§ 900.42 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§ 900.43 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) permit preparation of reports required by a self-determination contract and the Act; and

(b) permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or

prohibitions contained in any statute that applies to the self-determination contract.

§ 900.44 What specific minimum requirements shall an Indian tribe or tribal organization financial management system contain to meet these standards?

An Indian tribe or tribal organization financial management system shall include provisions for the following seven elements:

(a) *Financial reports.* The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities, as required in the financial reporting requirements negotiated and agreed to in the self-determination contract.

(b) *Accounting records.* The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) *Internal controls.* The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) *Budget controls.* The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract.

(e) *Allowable costs.* The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the tribe's or tribal organization's applicable OMB cost principles (see OMB Circulars A–87, A–122, or A–21, available from the Executive Office of the President, Publications Service, 725—17th Street NW., Washington, DC 20503), as amended by the Act and these regulations.

(f) *Source documentation.* The financial management system shall contain accounting records that are supported by source documentation, e.g., cancelled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) *Cash management.* The financial management system shall establish procedures to ensure the timely receipt of reports from sub-contractors on their cash balances, expenditures, and disbursements, so that the Indian tribe or tribal organization may prepare complete and accurate cash transaction reports as required by the self-determination contract.

§ 900.45 What requirements are imposed upon the Secretary for financial management by these standards?

In regard to paragraph (g) of § 900.44, the Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization based upon the payment schedule provided for in the self-determination contract and the annual funding agreement.

Procurement Management System Standards

§ 900.46 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Yes.

§ 900.47 What procurement standards shall an Indian tribe or tribal organization have?

Indian tribes and tribal organizations shall have standards that conform with the standards in this subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what are the basic standards that the Indian tribe or tribal organization shall follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or sub-contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a sub-contractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items. The Indian tribe or tribal organization should consider consolidating or breaking out procurements to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for ''major procurement transactions.''

(2) As provided for in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

(a) be in writing;

(b) identify the interested parties, their authorities, and the purposes of the contract;

(c) state the work to be performed under the contract;

(d) state the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and

(e) be subject to sections 7 (b) and (c) of the Act.

§ 900.50 What Federal laws, regulations, and Executive Orders apply to sub-contractors?

In addition to the Act, all applicable Federal laws, regulations, and Executive Orders apply to subcontractors. If an Indian tribe or tribal organization's contract requires subcontractor compliance with other Federal laws, regulations, and Executive Orders, then the Indian tribe or tribal organization should include appropriate provisions in the subcontracts. The subcontractor is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders not identified in the subcontract.

Property Management System Standards

§ 900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) in the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

(a) personal property with an acquisition value in excess of $5,000 per item;

(b) sensitive property; and

(c) real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

(a) for the conduct of periodic inventories;

(b) to prevent loss or damage to property; and

(c) to ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually rather than every 2 years;

(b) within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) the inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

§ 900.60 How does an Indian tribe or tribal organization dispose of Federal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days:

(1) the Indian tribe or tribal organization may dispose of the property as it sees fit and inform the Secretary of the disposal; or

(2) the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

Subpart G—Programmatic Reports and Data Requirements

§ 900.65 What programmatic reports and data shall the Indian tribe or tribal organization provide?

Each Indian tribe or tribal organization shall negotiate with the Secretary the type and frequency of program narrative and program data report(s) required to meet the needs of the contracting parties. The extent of available resources will be a consideration in the negotiations.

§ 900.66 What if the Indian tribe or tribal organization and the Secretary cannot come to an agreement concerning the type and/or frequency of program narrative and/or program data report(s)?

Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E.

§ 900.67 Will there be a uniform data set for all IHS programs?

IHS will work with Indian tribe or tribal organization representatives to develop a mutually defined uniform subset of data that is consistent with Congressional intent, imposes a minimal reporting burden, and meets the needs of the contracting parties.

§ 900.68 Will this uniform data set be required of all Indian tribe or tribal organizations contracting with the IHS under the Act?

No. The uniform data set for applicable to the services to be performed, will serve as the target for the Secretary and the Indian tribes or tribal organizations during individual negotiations on program data reporting requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

§ 900.69 What is the purpose of this subpart?

Section 105(l) of the Act requires the Secretary, at the request of an Indian tribe or tribal organization, to enter into a lease with the tribe or tribal organization for a building owned or leased by the tribe or tribal organization that is used for administration or delivery of services under the Act. The lease is to include compensation as provided in the statute as well as ''such other reasonable expenses that the Secretary determines, by regulation, to be allowable.'' This subpart contains requirements for these leases.

§ 900.70 What elements are included in the compensation for a lease entered into between the Secretary and an Indian tribe or tribal organization for a building owned or leased by the Indian tribe or tribal organization that is used for administration or delivery of services under the Act?

To the extent that no element is duplicative, the following elements may be included in the lease compensation:

(a) rent (sublease);

(b) depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds;

(c) contributions to a reserve for replacement of facilities;

(d) principal and interest paid or accrued;

(e) operation and maintenance expenses, to the extent not otherwise included in rent or use allowances, including, but not limited to, the following:

(1) water, sewage;

(2) utilities;

(3) fuel;

(4) insurance;

(5) building management supervision and custodial services;

(6) custodial and maintenance supplies;

(7) pest control;

(8) site maintenance (including snow and mud removal);

(9) trash and waste removal and disposal;

(10) fire protection/fire fighting services and equipment;

(11) monitoring and preventive maintenance of building structures and systems, including but not limited to:

(i) heating/ventilation/air conditioning;

(ii) plumbing;

(iii) electrical;

(iv) elevators;

(v) boilers;

(vi) fire safety system;

(vii) security system; and

(viii) roof, foundation, walls, floors.

(12) unscheduled maintenance;

(13) scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting);

(14) security services;

(15) management fees; and

(16) other reasonable and necessary operation or maintenance costs justified by the contractor;

(f) repairs to buildings and equipment;

(g) alterations needed to meet contract requirements;

(h) other reasonable expenses; and

(i) the fair market rental for buildings or portions of buildings and land, exclusive of the Federal share of building construction or acquisition costs, or the fair market rental for buildings constructed with Federal funds exclusive of fee or profit, and for land.

§ 900.71 Is a lease with the Secretary the only method available to recover the types of cost described in § 900.70?

No. With the exception of paragraph (h) in § 900.70 the same types of costs may be recovered in whole or in part under section 106(a) of the Act as direct or indirect charges to a self-determination contract.

§ 900.72 How may a tribe or tribal organization propose a lease to be compensated for the use of facilities?

There are three options available:

(a) The lease may be based on fair market rental.

(b) The lease may be based on a combination of fair market rental and paragraphs (a) through (h) of § 900.70, provided that no element of expense is duplicated in fair market rental.

(c) The lease may be based on paragraphs (a) through (h) of § 900.70 only.

Subpart I—Property Donation Procedures

General

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will give maximum weight to the requests of tribes or tribal organizations for donation of BIA or IHS excess property and excess or surplus Federal property, provided that the requesting tribe or tribal organization shall certify and justify that requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

Government-Furnished Property

§ 900.87 How does a tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to a

tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with each tribe or tribal organization, shall develop a list of the property used in a self-determination contract.

(2) The tribe or tribal organization shall indicate any items on the list to which the tribe or tribal organization wants the Secretary to retain title.

(3) The Secretary shall provide the tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the tribe or tribal organization.

(b) For government-furnished real property made available to a tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with the tribe or tribal organization, shall develop a list of the property furnished for use in a self-determination contract.

(2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202(b)(10). If the tribe or tribal organization desires to take title to any real property on the list, the tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the tribe or tribal organization.

(c) For government-furnished real and personal property made available to a tribe or tribal organization on or after October 25, 1994:

(1) The tribe or tribal organization shall take title to all property unless the tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202(b)(10).

§ 900.88 What should the tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for a tribe or individual Indian, the tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for a tribe:

(1) The tribe or tribal organization shall submit with its request a resolution of support from the governing body of the tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall take all necessary steps to effect a transfer the land to the Secretary of the Interior and shall also forward the tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to a tribe or tribal organization?

When a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(a) whose title has been transferred to a tribe or tribal organization;

(b) that is still in use in the program; and

(c) that has a value in excess of $5,000.

§ 900.90 Does government-furnished real property to which a tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Contractor-Purchased Property

§ 900.91 Who takes title to property purchased with funds under a self-determination contract or grant agreement pursuant to section 105(f)(2)(A)?

The contractor takes title to such property, unless the contractor chooses to have the United States take title. In that event, the contractor must inform the Secretary of the purchase and identify the property and its location in such manner as the contractor and the Secretary deem necessary. A request for the United States to take title to any item of contractor-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

§ 900.92 What should the tribe or tribal organization do if it wants contractor-purchased real property to be taken into trust?

The contractor shall submit a resolution of support from the governing body of the tribe in which the beneficial ownership is to be registered. If the request to take contractor-purchased real property into trust is submitted to the Secretary of Health and Human Services, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

§ 900.93 When may the Secretary elect to acquire title to contractor-purchased property?

When a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of contractor-purchased property:

(a) whose title has been transferred to a tribe or tribal organization;

(b) that is still in use in the program; and

(c) that has a value in excess of $5,000.

§ 900.94 Is contractor-purchased real property to which a tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Bia and IHS Excess Property

§ 900.95 What is BIA or IHS excess property?

BIA or IHS excess property means property under the jurisdiction of the BIA or IHS that is excess to the agency's needs and the discharge of its responsibilities.

§ 900.96 How can tribes or tribal organizations learn about BIA and IHS excess property?

The Secretary shall periodically furnish to tribes or tribal organizations a listing of all excess BIA or IHS personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

§ 900.97 How can a tribe or tribal organization acquire excess BIA or IHS property?

(a) The tribe or tribal organization shall submit to the appropriate Secretary a request for specific property that includes a certification and justification that the property is

intended for use in connection with a self-determination contract or grant. The Secretary shall expeditiously process the request and shall exercise discretion to donate the property in the manner described in this subpart I.

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the first requester. if there is a tie, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same piece of real property is submitted, the Secretary shall award the property to the tribe or tribal organization whose reservation or trust land is closest to the real property requested.

§ 900.98 Who takes title to excess BIA or IHS property donated to a tribe or tribal organization?

The tribe or tribal organization takes title to donated excess BIA or IHS property. The Secretary shall provide the tribe or tribal organization with all documentation needed to vest title in the tribe or tribal organization.

§ 900.99 Who takes title to any land that is part of excess BIA or IHS real property donated to a tribe or tribal organization?

(a) If a tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for a tribe, the tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the tribe or tribal organization.

(b) If a tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for a tribe, the requestor shall submit a resolution of support from the governing body of the tribe in which the beneficial ownership is to be registered.

(1) If the donation request is submitted to the Secretary of Health and Human Services, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the tribe or tribal organization's request and the tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(2) The Secretary shall not require the tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.100 May the Secretary elect to reacquire excess BIA or IHS property whose title has been transferred to a tribe or tribal organization?

Yes. When a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title any item of the property:

(a) whose title has been transferred to a tribe or tribal organization;

(b) that is still in use in the program; and

(c) that has a value in excess of $5,000.

§ 900.101 Is excess BIA or IHS real property to which a tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Excess or Surplus Government Property of Other Agencies

§ 900.102 What is excess or surplus government property of other agencies?

(a) ''Excess government property'' is real or personal property under the control of a Federal agency, other than BIA and IHS, which is not required for the agency's needs and the discharge of its responsibilities.

(b) ''Surplus government property'' means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration.

§ 900.103 How can tribes or tribal organizations learn about property that has been designated as excess or surplus government property?

The Secretary shall periodically furnish to tribes or tribal organizations listings of such property as may be made available from time to time by GSA or other Federal agencies, and shall obtain listings upon the request of a tribe or tribal organization.

§ 900.104 How may a tribe or tribal organization receive excess or surplus government property of other agencies?

(a) The tribe or tribal organization shall file a request for specific property with the Secretary, and shall certify and justify that the property is appropriate for use for a purpose for which a self-determination contract or grant is authorized under the Act.

(b) The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in the Federal Property Management Regulation, 41 CFR Chapter 101.

(c) Upon approval, the Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate. If the tribe or tribal organization informs the Secretary that a ''freeze'' has been placed on the requested property, the Secretary shall make every good faith effort to process the request in order to obtain the property within the ''freeze'' period.

(d) The Secretary shall specify that the property is requested for donation to a tribe or tribal organization pursuant to authority provided in section 105(f)(3) of the Act.

(e) The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

§ 900.105 Who takes title to excess or surplus Federal property donated to a tribe or tribal organization?

(a) Title to any donated excess or surplus Federal personal property shall vest in the tribe or tribal organization upon taking possession.

(b) Legal title to donated excess or surplus Federal real property shall vest in the tribe or tribal organization upon acceptance by the tribe or tribal organization of a proper deed of conveyance.

(c) If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for a tribe, the tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(1) If the tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the tribe or tribal organization.

(2) If the tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for a tribe:

(i) The tribe or tribal organization shall submit with its request a resolution of support from the governing body of the tribe in which the beneficial ownership is to be registered.

(ii) If the donation request of the tribe or tribal organization is submitted to the Secretary of Health and Human Services, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall also forward the tribe or tribal organization's request and the tribe's resolution.

(iii) The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(iv) The Secretary shall not require submission of any information other

than that required by Federal law and regulation.

§ 900.106 If a contract or grant agreement or portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus Federal property of other agencies that was donated to a tribe or tribal organization?

No. Section 105(f)(3) of the Act does not give the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to a tribe or tribal organization.

Property Eligible for Replacement Funding

§ 900.107 Is property that a tribe or tribal organization obtains title under this subpart eligible for replacement funding?

Yes. Government-furnished property, contractor-purchased property and excess BIA and IHS property donated to a tribe or tribal organization to which a tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.

Subpart J—Construction Contracts

§ 900.110 What does this Subpart cover?

(a) This subpart establishes requirements for issuing fixed-price or cost-reimbursable contracts to provide: design, construction, repair, improvement, expansion, replacement, erection of new space, or demolition of one or more Federal facilities. It applies to tribal facilities where the Secretary is authorized by law to design, construct and/or renovate, or make improvements to such tribal facilities.

(b) Activities covered by construction contracts under this subpart are: design and architectural/engineering services, construction project management, and the actual construction of the building or facility in accordance with the construction documents, including all labor, materials, equipment, and services necessary to complete the work defined in the construction documents.

(1) Such contracts may include the provision of movable equipment, telecommunications and data processing equipment, furnishings (including works of art), and special purpose equipment, when part of a construction contract let under this subpart.

(2) While planning services and construction management services as defined in § 900.113 may be included in a construction contract under this subpart, they may also be contracted separately using the model agreement in section 108 of the Act.

§ 900.111 What activities of construction programs are contractible?

The Secretary shall, upon the request of any Indian tribe by tribal resolution, enter into a self-determination contract to plan, conduct, and administer construction programs or portions thereof.

§ 900.112 What are construction phases?

(a) Construction programs generally include the following activities in phases which can vary by funding source (contact your funding source for more information regarding the conduct of their program):

(1) *The preplanning phase.* The phase during which an initial determination of project need is made and supporting information collected for presentation in a project application. This project application process is explained in more detail in § 900.122;

(2) *The planning phase.* The phase during which planning services are provided. This phase can include conducting and preparing a detailed needs assessment, developing justification documents, completing and/or verifying master plans, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies, and developing a project Program of Requirements (POR);

(3) *The design phase.* The phase during which licensed design professional(s) using the POR as the basis for design of the project, prepare project plans, specifications, and other documents that are a part of the construction documents used to build the project.

(4) *The construction phase.* The phase during which the project is constructed. The construction phase includes providing the labor, materials, equipment, and services necessary to complete the work in accordance with the construction documents prepared as part of the design phase.

(b) The following activities may be part of phases described in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(1) Management; and

(2) Environmental, archeological, cultural resource, historic preservation, and similar assessments.

§ 900.113 Definitions.

(a) *Construction contract* means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract:

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(b) *Construction management services* (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. The construction management services consultant (typically an engineer or architect) assists and advises the Indian tribe or tribal organizations in such activities as:

(1) coordination and information exchange between the Indian tribe or tribal organization and the Federal government;

(2) preparation of tribal or tribal organization construction contract proposals;

(3) tribal or tribal organization subcontract scope of work identification and subcontract preparation, and competitive selection of tribal or tribal organization construction contract subcontractors (see § 900.110);

(4) review of work to ensure compliance with the POR and/or the construction contract. This does not involve construction project management as defined in paragraph (d) of this section.

(c) *Construction programs* include programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, water conservation, flood control, and port facilities, and environmental, archeological, cultural resource, historic preservation, and similar assessments.

(d) *Construction project management* means direct responsibility for the construction project through day-to-day on-site management and administration of the project. Activities may include cost management, project budgeting, project scheduling, procurement services.

(e) *Design* means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract, as well as services provided by or for licensed design professionals during the bidding/

negotiating, construction, and operational phases of the project.

(f) *Planning services* means activities undertaken to support agency and/or congressional funding of a construction project. Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed and completion of approved justification documents and a program of requirements (POR) for the project.

(g) *Program of Requirements (POR)* is a planning document developed during the planning phase for an individual project. It provides background about the project; site information; programmatic needs; and, for facilities projects, a detailed room-by-room listing of spaces, including net and gross sizes, finish materials to be used, furnishings and equipment, and other information and design criteria on which to base the construction project documents.

(h) *Scope of Work* means the description of the work to be provided through a contract issued under this subpart and the methods and processes to be used to accomplish that work. A scope of work is typically developed based on criteria provided in a POR during the design phase, and project construction documents (plans and specifications) during the construction phase.

§ 900.114 Why is there a separate Subpart in these regulations for construction contracts and grants?

Because the Act differentiates between construction contracts and the model agreement in section 108 of the Act which is required for contracting other activities. Construction contracts are separately defined in the Act and are subject to a separate proposal and review process.

§ 900.115 How do self-determination construction contracts relate to ordinary Federal procurement contracts?

(a) A self-determination construction contract is a government-to-government agreement that transfers control of the construction project, including administrative functions, to the contracting Indian tribe or tribal organization to facilitate effective and meaningful participation by the Indian tribe or tribal organization in planning, conducting, and administrating the construction project, and so that the construction project is responsive to the true needs of the Indian community. The Secretary's role in the conduct of a contracted construction project is limited to the Secretary's responsibilities set out in § 900.132.

(b) Self-determination construction contracts are not traditional ''procurement'' contracts.

(1) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations promulgated under such Act, shall apply to a construction contract or subcontract only to the extent that application of the provision is:

(i) Necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) Directly related to the construction activity; and

(iii) not inconsistent with the Act.

(2) A list of the Federal requirements that meet the requirements of this paragraph shall be included in an attachment to the contract under negotiations between the Secretary and the tribal organization.

(3) Except as provided in paragraph (b)(2) of this section, no Federal law listed in section 105(3)(C)(ii) of the Act or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal government shall apply to a construction contract that an Indian tribe or tribal organization enters into under this Act, unless expressly provided in the law.

(c) Provisions of a construction contract under this subpart shall be liberally construed in favor of the contracting Indian tribe or tribal organization.

§ 900.116 Are fixed-price contracts treated the same as cost-reimbursable contracts?

Yes, except that in fixed-price construction contracts, appropriate clauses shall be negotiated to properly allocate the contract risks between the government and the contractor.

§ 900.117 Do these ''construction contract'' regulations apply to planning services?

(a) These regulations apply to planning services contracts only as provided in this section.

(1) The Indian tribe or tribal organization shall submit to the Secretary for review and approval the POR documents produced as a part of a model contract under section 108 of the Act or under a construction contract under this subpart.

(i) Within 60 days after receipt of the POR from the Indian tribe or tribal organization for a project that has achieved priority ranking or that is funded, the Secretary shall:

(A) approve the POR; or

(B) notify the Indian tribe or tribal organization of and make available any objections to the POR that the Secretary may have; or

(C) notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 60 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(ii) Within a maximum of 180 days after receipt of a POR from an Indian tribe or tribal organization for a project that is not funded and is not described in paragraph (a)(1)(i) of this section, the Secretary shall:

(A) approve the POR; or

(B) notify the Indian tribe or tribal organization of and make available any objections to the POR; or

(C) notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 180 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(2) Any failure of the Secretary to act on a POR within the applicable period required in paragraph (a)(1) of this section will be deemed to be a rejection of the POR and will authorize the commencement of any appeal as provided in section 110 of the Act, or, if a model agreement under section 108 of the Act is used, the disputes provision of that agreement.

(3) if an Indian tribe or tribal organization elects to provide planning services as part of a construction contract rather than under a model agreement as set out in section 108 of the Act, the regulations in this subpart shall apply.

(b) The parties to the contract are encouraged to consult during the development of the POR and following submission of the POR to the Secretary.

§ 900.118 Do these ''construction contract'' regulations apply to construction management services?

No. Construction management services may be contracted separately under section 108 of the Act. Construction management services consultants assist and advise the Indian tribe or tribal organization to implement construction contracts, but have no contractual relationship with or

authority to direct construction contract subcontractors.

(a) If the Indian tribe or tribal organization chooses to contract solely for construction management services, these services shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and Secretary;

(2) Review of work produced by the Secretary to determine compliance with:

(i) the POR and design contract during the design stage; or

(ii) the project construction documents during the construction stage;

(3) Disputes shall be resolved in accordance with the disputes clause of the CMS contract.

(b) If the Indian tribe or tribal organization conducts CMS under section 108 of the Act and the Indian tribe or tribal organization contracts separately under this subpart for all or some of the activities in § 900.110, the contracted activities shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and Secretary;

(2) Preparation of tribal or tribal organization construction subcontract scope of work identification and subcontract preparation, and competitive selection of tribal or tribal organization construction contract subcontractors;

(3) Review of work produced by tribal or tribal organization construction subcontractors to determine compliance with:

(i) the POR and the design contract during the design stage; or

(ii) the project construction documents during the construction stage.

§ 900.119 To what extent shall the Secretary consult with affected Indian tribes before spending funds for any construction project?

Before spending any funds for a planning, design, construction, or renovation project, whether subject to a competitive application and ranking process or not, the Secretary shall consult with any Indian tribe or tribal organization(s) that would be significantly affected by the expenditure to determine and to follow tribal preferences to the greatest extent feasible concerning: size, location, type, and other characteristics of the project.

§ 900.120 How does an Indian tribe or tribal organization find out about a construction project?

Within 30 days after the Secretary's allocation of funds for planning phase, design phase, or construction phase activities for a specific project, the Secretary will notify the Indian tribe or tribal organization(s) to be benefitted of the availability of the funds for the project. The Secretarial notice of fund allocation shall offer technical assistance in the preparation of a contract proposal.

(a) The Secretary shall, within 30 days after receiving a request from an Indian tribe or tribal organization, furnish the Indian tribe or tribal organization with all information available to the Secretary about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports.

(b) An Indian tribe or tribal organization is not required to request this information prior to submitting a notification of intent to contract or a contract proposal.

(c) The secretary shall have a continuing responsibility to furnish information.

§ 900.121 Does the Indian tribe or tribal organization have a right of first refusal?

(a) Yes. An Indian tribe or tribal organization shall notify the Secretary within 45 days after receiving the Secretarial notice described in § 900.120 if it wishes to contract one or more phases of the project. The Indian tribe or tribal organization will notify the Secretary by registered mail, return receipt requested. Notice by the Indian tribe or tribal organization does not require submission of a full contract proposal. After notifying the Secretary and unless already submitted as part of the Indian tribe or tribal organization's notification or intent to contract, the Indian tribe or tribal organization shall prepare a self-determination construction contract proposal in accordance with this subpart.

(b) Before the start of the contracting process for any phase during the construction process and unless previously notified by the Indian tribe or tribal organization of intent to contract for subsequent stages, the Secretary shall repeat the requirements of paragraph § 900.120(a).

(c) The Indian tribe's or tribal organization's decision not to contract under the Act or a prior attempt to contract under the Act will not bar an Indian tribe or tribal organization from bidding on or contracting for the construction project under any other act or process.

§ 900.122 What happens during the preplanning phase and can an Indian tribe or tribal organization perform any of the activities involved in this process?

(a) The application and ranking process for developing a priority listing of projects varies between agencies. There are, however, steps in the selection process that are common to most selection processes. An Indian tribe or tribal organization that wishes to secure a construction project should contact the appropriate agency to determine the specific steps involved in the application and selection process used to fund specific types of projects. When a priority process is used in the selection of construction projects, the steps involved in the application and ranking process are as follows:

(1) *Application.* The agency solicits applications from Indian tribes or tribal organizations. In the request for applications, the Secretary provides specific information regarding the type of project to be funded, the objective criteria that will be used to evaluate applications, the points or weight that each criterion will be assigned, and the time when applications are due. An Indian tribe or tribal organization may prepare the application (technical assistance from the agency, within resources available, shall be provided upon request from an Indian tribe or tribal organization) or may rely upon the agency to prepare the application.

(2) *Ranking/Prioritization.* The Secretary evaluates the applications based on the criteria provided as part of the application preparation process. The Secretary applies only criteria and weights assigned to each criteria that were disclosed to the Indian tribe or tribal organization during the application stage. The applications are then ranked in order from the application that best meets application criteria to the application that least meet the application criteria.

(3) *Validation.* Before final acceptance of a ranked application, the information, such as demographic information, deficiency levels reported in application, the condition of existing facilities, and program housing needs, is validated. During this process, additional information may be developed by the Indian tribe or tribal organization in support of the original information or the Secretary may designate a representative of the Department to conduct an on-site review of the information contained in the application.

§ 900.123 What does an Indian tribe or tribal organization do if it wants to secure a construction contract?

(a) The Act establishes a special process for review and negotiation of proposals for construction contracts which is different than that for other self-determination contract proposals. The Indian tribe or tribal organization should notify the Secretary of its intent to contract in accordance with § 900.121(a). After notification, the Indian tribe or tribal organization should prepare its contract proposal in accordance with the sections of this subpart. While developing its construction contract proposal, the Indian tribe or tribal organization can request technical assistance from the Secretary. Not later than 30 days after receiving a request from an Indian tribe or tribal organization, the Secretary will provide to the Indian tribe or tribal organization all information available about the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports, and archaeological reports. The responsibility of the Secretary to furnish this information shall be a continuing one.

(b) At the request of the Indian tribe or tribal organization and before finalizing its construction contract proposal, the Secretary shall provide for a precontract negotiation phase during the development of a contract proposal. Within 30 days the Secretary shall acknowledge receipt of the proposal and, if requested by the Indian tribe or tribal organization, shall confer with the Indian tribe or tribal organization to develop a negotiation schedule. The negotiation phase shall include, at a minimum:

(1) The provision of technical assistance under section 103 of the Act and paragraph (a) of this section;

(2) A joint scoping session between the Secretary and the Indian tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement;

(3) An opportunity for the Secretary to revise plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the Indian tribe or tribal organization;

(4) A negotiation session during which the Secretary and the Indian tribe or tribal organization shall seek to develop a mutually agreeable contract proposal; and

(5) Upon the request of the Indian tribe or tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.

§ 900.124 What if the Indian tribe or tribal organization and the Secretary cannot develop a mutually agreeable contract proposal?

(a) If the Secretary and the Indian tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal under the procedures in § 900.123, the Indian tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections 102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing to the tribal organization;

(2) Provide assistance to the tribal organization to overcome the stated objections;

(3) Provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly to the court under section 110(a) of the Act.

§ 900.125 May the Indian tribe or tribal organization elect to use a grant in lieu of a contract?

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when mutually agreed to by the Secretary and the Indian tribe or tribal organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.

§ 900.126 What shall a construction contract proposal contain?

(a) In addition to the full name, address, and telephone number of the Indian tribe or tribal organization submitting the construction proposal, a construction contract proposal shall contain descriptions of the following standards under which they propose to operate the contract:

(1) The use of licensed and qualified architects and engineers;

(2) Applicable health and safety standards;

(3) Adherence to applicable Federal, State, local, or tribal building codes and engineering standards;

(4) Structural integrity;

(5) Accountability of funds;

(6) Adequate competition for sub-contracting under tribal or other applicable law;

(7) The commencement, performance, and completion of the contract;

(8) Adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals);

(9) The use of proper materials and workmanship;

(10) Necessary inspection and testing;

(11) With respect to the self-determination contract between the Indian tribe or tribal organization and Federal government, a process for changes, modifications, stop work, and termination of the work when warranted;

(b) In addition to provisions regarding the program standards listed in paragraph (a) of this section or the assurances listed in paragraph (c) of this section, the Indian tribe or tribal organization shall also include in its construction contract proposal the following:

(1) In the case of a contract for design activities, this statement, ''Construction documents produced as part of this contract will be produced in accordance with the Program of Requirements and/or Scope of Work,'' and the POR and/or Scope of Work shall be attached to the contract proposal. If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable

Federal standards then the Secretary shall accept the tribally proposed standards; and

(2) In the case of a contract for construction activities, this statement, ''The facility will be built in accordance with the construction documents produced as a part of design activities. The project documents, including plans and specifications, are hereby incorporated into this contract through this reference.'' If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(3) Proposed methods to accommodate the responsibilities of the Secretary provided in § 900.132; and

(4) Proposed methods to accommodate the responsibilities of the Indian tribe or tribal organization provided in § 900.131 unless otherwise addressed in paragraph (a) of this section;

(5) A contract budget as described in § 900.128; and

(6) A period of performance for the conduct of all activities to be contracted.

(7) A payment schedule as described in § 900.133;

(8) If the Indian tribe or tribal organization is conducting CMS under this subpart, the Indian tribe or tribal organization will provide a job description and qualification statement for key positions.

(9) Current (unrevoked) authorizing resolutions in accordance with § 900.5(d) from all Indian tribes benefitting from the contract proposal;

(10) Any responsibilities, in addition to the Federal responsibilities listed in § 900.132, which the Indian tribe or tribal organization proposes the Federal government to perform to assist with the completion of the scope of work;

(c) The Indian tribe or tribal organization will provide the following assurances in its contract proposal:

(1) If the Indian tribe or tribal organization proposes to use Federal property in carrying out the contract, ''The Indian tribe or tribal organization will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. The Indian tribe or tribal organization will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project''; and

(2) The Indian tribe or tribal organization will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residential structures; and

(3) The Indian tribe or tribal organization will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal participation in purchases; and

(4) Except for work performed by tribal or tribal organization employees, the Indian tribe or tribal organization will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) regarding labor standards for Federally assisted construction subagreements; and

(5) The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more; and

(6) The Indian tribe or tribal organization will comply with all applicable Federal environmental laws, regulations, and Executive Orders; and

(7) The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting the components or potential components of the national wild and scenic rivers system; and

(8) The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*)''.

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, and share identified laws, Executive Orders, or regulations with the other party, and include reference to such laws in the construction contract.

§ 900.127 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards.

§ 900.128 What can be included in the Indian tribe's or tribal organization's contract budget?

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties.

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization's budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) the reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) the costs of preparing the contract proposal and supporting cost data;

(3) the costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) the reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) the ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with

carrying out the contract, local market conditions, and other relevant considerations.

(d) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in paragraphs (c)(4)(i) and (c)(4)(ii) above.

(e) The Indian tribe's or tribal organization's budget proposal includes a detailed budget breakdown for performing the scope of work including a total ''not to exceed'' dollar amount with which to perform the scope of work. Specific budget line items, if requested by the Indian tribe or tribal organization, can include the following:

(1) the administrative costs the Indian tribe or tribal organization may incur including:

(i) personnel needed to provide administrative oversight of the contract,

(ii) travel costs incurred, both local travel incurred as a direct result of conducting the contract and remote travel necessary to review project status with the Secretary,

(iii) meeting costs incurred while meeting with community residents to develop project documents,

(iv) fees to be paid to consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who will provide construction management services;

(2) the fees to be paid to architects and engineers to assist in preparing project documents and to assist in oversight of the construction process;

(3) the fees to be paid to develop project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance, and;

(4) In the case of a contract to conduct project construction activities, the fees to provide a part-time or full-time on-site inspector, depending on the terms of the contract, to monitor construction activities;

(5) In the case of a contract to conduct project construction activities, project site development costs;

(6) In the case of a contract to conduct project construction activities, project construction costs including those costs described in paragraph (c)(4), above

(7) the cost of securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;

(8) A contingency amount for unanticipated conditions of the construction phase of cost-reimbursable contracts. The amount of the contingency provided shall be 3 per cent of activities being contracted or 50 per cent of the available contingency funds, whichever is less. Any additional contingency funds for the construction phase will be negotiated on an as needed basis subject to the availability of funds and the nature, scope, and complexity of the project. Any contingency for other phases will be negotiated on a contract by contract basis. Unused contingency funds obligated to the contract and remaining at the end of the contract will be considered savings.

(9) Other costs incurred that are directly related to the conduct of contract activities.

§ 900.129 What funding shall the Secretary provide in a construction contract?

The Secretary shall provide an amount under a construction contract that reflects an overall fair and reasonable price to the parties. These costs include:

(a) the reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(b) the costs of preparing the contract proposal and supporting cost data; and

(c) the costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract; and

(d) If Indian tribe or tribal organization is submitting a fixed-price construction contract:

(1) the reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(2) the ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.

(3) In establishing a contract budget for a construction project, the Secretary is not required to separately identify the components described in clauses (1) and (2) above.

§ 900.130 How do the Secretary and Indian tribe or tribal organization arrive at an overall fair and reasonable price for the performance of a construction contract?

(a) Throughout the contract award process, the Secretary and Indian tribe or tribal organization shall share all construction project cost information available to them in order to facilitate reaching agreement on an overall fair and reasonable price for the project or part thereof. In order to enhance this communication, the government's estimate of an overall fair and reasonable price shall:

(1) Contain a level of detail appropriate to the nature and phase of the work and sufficient to allow comparisons to the tribe or tribal organization estimate;

(2) Be prepared in a format coordinated with the Indian tribe or tribal organization; and

(3) Include the cost elements contained in section 105(m)(4) of the Act.

(b) The government's cost estimate shall be an independent cost estimate based on such information as the following:

(1) Prior costs to the government for similar projects adjusted for comparison to the target location, typically in unit costs, such as dollars per pound, square meter cost of building, or other unit cost that can be used to make a comparison;

(2) Actual costs previously incurred by the Indian tribe or tribal organization for similar projects;

(3) Published price lists, to include regional adjustment factors, for materials, equipment, and labor; and

(4) Projections of inflation and cost trends, including projected changes such as labor, material, and transportation costs.

(c) The Secretary shall provide the initial government cost estimate to the Indian tribe or tribal organization and make appropriate revisions based on concerns raised or information provided by the Indian tribe or tribal organization. The Secretary and the Indian tribe or tribal organization shall continue to revise, as appropriate, their respective cost estimates based on changed or additional information such as the following:

(1) Actual subcontract bids;

(2) Changes in inflation rates and market conditions, including local market conditions;

(3) Cost and price analyses conducted by the Secretary and the tribe or tribal organization during negotiations;

(4) Agreed upon changes in the size, scope and schedule of the construction project; and

(5) Agreed upon changes in project plans and specifications.

(d) Considering all of the information available, the Secretary and the tribe or tribal organization shall negotiate the amount of the construction contract. The objective of the negotiations is to arrive at an amount that is fair under current market conditions and reasonable to both the government and the tribe or tribal organization. As a

result, the agreement does not necessarily have to be in strict conformance with either party's cost estimate nor does agreement have to be reached on every element of cost, but only on the overall fair and reasonable price of each phase of the work included in the contract.

(e) If the fair and reasonable price arrived at under paragraph (d) above would exceed the amount available to the Secretary, then:

(1) If the Indian tribe or tribal organization elects to submit a final proposal, the Secretary may decline the proposal under section 105(m)(4)(C)(v) of the Act; or

(2) If requested by the Indian tribe or tribal organization:

(i) the Indian tribe or tribal organization and the Secretary may jointly explore methods of expanding the available funds through the use of contingency funds, rebudgeting, or seeking additional appropriations; or

(ii) the Indian tribe or tribal organization may elect to propose a reduction in project scope to bring the project price within available funds; or

(ii) the Secretary and Indian tribe or tribal organization may agree that the project be executed in phases.

§ 900.131 What role does the Indian tribe or tribal organization play during the performance of a self-determination construction contract?

(a) The Indian tribe or tribal organization is responsible for the successful completion of the project in accordance with the approved contract documents.

(b) If the Indian tribe or tribal organization is contracting to perform design phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) the Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and engineers and other consultants needed to accomplish the self-determination construction contract.

(2) the Indian tribe or tribal organization shall administer and disburse funds provided through the contract in accordance with subpart F, § 900.41 through § 900.44 and a management system in accordance with subpart F, § 900.51 through § 900.60.

(3) the Indian tribe or tribal organization shall direct the activities of project architects, engineers, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between the Indian tribe or tribal organization and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to assure compliance with the POR.

(4) the Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and contract performance period as negotiated between and agreed to by the parties.

(5) the Indian tribe or tribal organization shall provide the Secretary with an opportunity to review and approve for general compliance with contract requirements and project plans and specifications only at the concept phase, the schematic phase, the design development phase, and the final construction documents phase or as otherwise negotiated.

(6) the Indian tribe or tribal organization shall provide the Secretary with the plans and specifications after their final review so, if needed, the Secretary may obtain an independent government cost estimate for the construction of the project.

(7) the Indian tribe or tribal organization shall retain project records and design documents for a minimum of 3 years following completion of the contract.

(8) the Indian tribe or tribal organization shall provide progress reports and financial status reports quarterly or as negotiated that contain a narrative of the work accomplished, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project. The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of contracts and major subcontracts and modifications, an initial work and payment schedule and updates as they may occur, and A/E services deliverables.

(c) If the Indian tribe or tribal organization is contracting to perform project construction phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) the Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and engineers and other consultants needed to accomplish the self-determination construction contract.

(2) the Indian tribe or tribal organization shall administer and dispense funds provided through the contract in accordance with subpart F, § 900.41 through § 900.44 and a management system in accordance with subpart F, § 900.51 through § 900.60.

(3) the Indian tribe or tribal organization shall subcontract with or provide the services of construction contractors or provide its own forces to conduct construction activities in accordance with the project construction documents or as otherwise negotiated between and agreed to by the parties.

(4) the Indian tribe or tribal organization shall direct the activities of project architects, engineers, construction contractors, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between itself and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to assure compliance with the project plans and specifications.

(5) the Indian tribe or tribal organization shall manage or provide for the management of day-to-day activities of the contract including the issuance of construction change orders to subcontractors except that, unless the Secretary agrees:

(i) the Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed its self-determination contract budget;

(ii) the Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed the performance period in its self-determination contract budget;

(iii) the Indian tribe or tribal organization may not issue to a construction subcontractor a change order that is a significant departure from the scope or objective of the project.

(6) the Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and performance period as negotiated between and agreed to by the parties.

(7) the Indian tribe or tribal organization shall provide to the Secretary progress and financial status reports.

(i) the reports shall be provided quarterly or as negotiated, and shall contain a narrative of the work accomplished, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project.

(ii) the Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of

change orders, contracts and major subcontracts, an initial schedule of values and updates as they may occur, and an initial construction schedule and updates as they occur.

(8) the Indian tribe or tribal organization shall maintain on the job-site or project office, and make available to the Secretary during monitoring visits: construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline drawings.

(d) Upon completion of the project, the Indian tribe or tribal organization shall provide to the Secretary a reproducible copy of the record plans and a contract closeout report.

(e) For cost-reimbursable projects, the Indian tribe or tribal organization shall not be obligated to continue performance that requires an expenditure of more funds than were awarded under the contract. If the Indian tribe or tribal organization has a reason to believe that the total amount required for performance of the contract will be greater than the amount of funds awarded, it shall provide reasonable notice to the Secretary. If the Secretary does not take the action necessary to increase the amount of funds awarded under the contract, the Indian tribe or tribal organization may suspend performance of the contract until additional funds are awarded.

§ 900.132 What role does the Secretary play during the performance of a self-determination construction contract?

(a) If the Indian tribe or tribal organization is contracting solely to perform construction management services either under this subpart or section 108 of the Act, the Secretary has the following responsibilities:

(1) the Secretary is responsible for the successful completion of the project in accordance with the approved contract documents. In fulfilling those responsibilities, the Secretary shall consult with the Indian tribe or tribal organization on a regular basis as agreed to by the parties to facilitate the exchange of information between the Indian tribe or tribal organization and Secretary;

(2) the Secretary shall provide the Indian tribe or tribal organization with regular opportunities to review work produced to determine compliance with:

(i) the POR, during the conduct of design phase activities. The Secretary shall provide the Indian tribe or tribal organization with an opportunity to review the project construction documents at the concept phase, the schematic phase, the design development phase, and the final construction documents phase or as otherwise negotiated. Upon receipt of project construction documents for review, the Indian tribe or tribal organization shall not take more than 21 days to make available to the Secretary any comments or objections to the construction documents as submitted by the Secretary. Resolution of any comments or objections shall be in accordance with dispute resolution procedures as agreed to by the parties and contained in the contract; or

(ii) the project construction documents, during conduct of the construction phase activities. The Indian tribe or tribal organization shall have the right to conduct monthly or critical milestone on-site monitoring visits or as negotiated with the Secretary;

(b) If the Indian tribe or tribal organization is contracting to perform design and/or construction phase activities, the Secretary shall have the following responsibilities:

(1) In carrying out the responsibilities of this section, and specifically in carrying out review and approval functions under this section, the Secretary shall provide for tribal participation in the decisionmaking process and shall honor tribal preferences and recommendations to the greatest extent feasible. This includes promptly notifying the Indian tribe or tribal organization of any concerns or issues that may lead to disapproval, meeting with the Indian tribe or tribal organization to discuss these concerns and issues and to share relevant information, and making a good faith effort to accommodate tribal recommendations. The time allowed for Secretarial review and approval shall be no more than 21 days per review unless a different time period is negotiated and specified in individual contracts. The 21-day time period may be extended if the Indian tribe or tribal organization agrees to the extension in writing. Disagreements over the Secretary's decisions in carrying out these responsibilities shall be handled under subpart N governing contract disputes under the Contract Disputes Act.

(2) To the extent the construction project is subject to NEPA or other environmental laws, the Secretary shall make the final determination under such laws. All other environmentally related functions are contractible.

(3) If the Indian tribe or tribal organization conducts planning activities under this subpart, the Secretary shall review and approve final planning documents for the project to ensure compliance with applicable planning standards.

(4) When a contract or portion of a contract is for project construction activities, the Secretary shall obtain an independent government cost estimate that is derived from the final project plans and specifications or the Secretary may rely on Indian tribe or tribal organizations cost estimate. The Secretary shall obtain, if any, the cost estimate within 90 days or less of receipt of the final plans and specifications from the Indian tribe or tribal organization.

(5) If the contracted project involves design activities, the Secretary shall have the authority to review and approve for general compliance with contract requirements the project plans and specifications only at the concept phase, the schematic phase, the design development phase, and the final construction documents phase or as otherwise negotiated.

(6) If the contracted project involves design activities, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal government purposes:

(i) the copyright in any work developed under a contract or subcontract of this subpart; and

(ii) Any rights of copyright to which an Indian tribe or tribal organization or a tribal subcontractor purchases ownership through this contract.

(7) Changes that require an increase to the negotiated contract budget or an increase in the negotiated performance period or are a significant departure from the scope or objective of the project shall require approval of the Secretary.

(8) Review and comment on specific shop drawings as negotiated and specified in individual contracts.

(9) The Secretary retains the right to conduct monthly on-site monitoring visits, or alternatively if negotiated with the Indian tribe or tribal organization, critical milestone on-site monitoring visits.

(10) The Secretary retains the right to conduct final project inspections jointly with the Indian tribe or tribal organization and to accept the building or facility. Objections of the Secretary to the facility identified during final project inspections shall be provided to the Indian tribe or tribal organization and shall be limited to items that are materially noncompliant.

(11) The Secretary can require an Indian tribe or tribal organization to suspend work under a contract in accordance with this paragraph. The Secretary may suspend a contract for no

more than 30 days unless the Indian tribe or tribal organization has failed to correct the reason(s) for the suspension or unless the cause of the suspension cannot be resolved through either the efforts of the Secretary or the Indian tribe or tribal organization.

(i) The following are reasons the Secretary may suspend work under a self-determination contract for construction:

(A) differing site conditions encountered upon commencement of construction activities that impact health or safety concerns or shall require an increase in the negotiated project budget;

(B) the Secretary discovers materially non-compliant work;

(C) funds allocated for the project that is the subject of this contract are rescinded by Congressional action; or

(D) other Congressional actions occur that materially affect the subject matter of the contract.

(ii) If the Secretary wishes to suspend the work, the Secretary shall first provide written notice and an opportunity for the Indian tribe or tribal organization to correct the problem. The Secretary may direct the Indian tribe or tribal organization to temporarily suspend work under a contract only after providing a minimum of 5 working days advance written notice to the Indian tribe or tribal organization describing the nature of the performance deficiencies or imminent safety, health or environmental issues which are the cause for suspending the work.

(iii) The Indian tribe or tribal organization shall be compensated for reasonable costs incurred due to any suspension of work that occurred through no fault of the Indian tribe or tribal organization.

(iv) Disputes arising as a result of a suspension of the work by the Secretary shall be subject to the Contract Disputes Act or any other alternative dispute resolution mechanism as negotiated between and agreed to by the parties and contained in the contract.

(12) The Secretary can terminate the project for cause in the event non-compliant work is not corrected through the suspension process specified in paragraph (11) above.

(13) The Secretary retains authority to terminate the project for convenience for the following reasons:

(i) termination for convenience is requested by the Indian tribe or tribal organization;

(ii) termination for convenience is requested by the Secretary and agreed to by the Indian tribe or tribal organization;

(iii) funds allocated for the project that is the subject of the contract are rescinded by Congressional action;

(iv) other Congressional actions take place that affect the subject matter of the contract;

(v) if the Secretary terminates a self-determination construction contract for convenience, the Secretary shall provide the Indian tribe or tribal organization 21 days advance written notice of intent to terminate a contract for convenience.

§ 900.133 Once a contract is awarded, how will the Indian tribe or tribal organization receive payments?

(a) A schedule for advance payments shall be developed based on progress, need, and other considerations in accordance with applicable law. The payment schedule shall be negotiated by the parties and included in the contract. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

(b) Payments shall be made to the Indian tribe or tribal organization according to the payment schedule contained in the contract. If the contract does not provide for the length of each allocation period, the Secretary shall make payments to the Indian tribe or tribal organization at least quarterly. Each allocation shall be adequate to provide funds for the contract activities anticipated to be conducted during the allocation period, except that:

(1) the first allocation may be greater than subsequent allocations and include mobilization costs, and contingency funds described in § 900.128(e)(8); and

(2) any allocation may include funds for payment for materials that will be used during subsequent allocation periods.

(c) The Indian tribe or tribal organization may propose a schedule of payment amounts measured by time or measured by phase of the project (e.g. planning, design, construction).

(d) The amount of each payment allocation shall be stated in the Indian tribe or tribal organizations contract proposal. Upon award of the contract, the Secretary shall transfer the amount of the first allocation to the Indian tribe or tribal organization within 21 days after the date of contract award. The second allocation shall be made not later than 7 days before the end of the first allocation period.

(e) Not later than 7 days before the end of each subsequent allocation period after the second allocation, the Secretary shall transfer to the Indian tribe or tribal organization the amount for the next allocation period, unless the Indian tribe or tribal organization is delinquent in submission of allocation period progress reports and financial reports or the Secretary takes action to suspend or terminate the contract in accordance with § 900.132(b)(11), § 900.132(b)(12), or § 900.132(b)(13).

§ 900.134 Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?

The Contract Disputes Act generally applies to such amendments. However, the declination process and the procedures in § 900.123 and § 900.124 apply to the proposal by an Indian tribe or tribal organization when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds by the Secretary under § 900.120.

§ 900.135 At the end of a self-determination construction contract, what happens to savings on a cost-reimbursement contract?

The savings shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract. Unexpended contingency funds obligated to the contract, and remaining at the end of the contract, are savings.

§ 900.136 Do all provisions of the other subparts apply to contracts awarded under this subpart?

Yes, except as otherwise provided in this subpart and unless excluded as follows: programmatic reports and data requirements, reassumption, contract review and approval process, contract proposal contents, and § 900.150 (d) and (e) of these regulations.

Subpart K—Waiver Procedures

§ 900.140 Can any provision of these regulations be waived?

Yes. Upon the request of an Indian tribe or tribal organization, the Secretary shall waive any provision of these regulations, including any cost principles adopted by these regulations, if the Secretary finds that granting the waiver either is in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law.

§ 900.141 How does an Indian tribe or tribal organization get a waiver?

To obtain a waiver an Indian tribe or tribal organization shall submit a written request to the Secretary identifying the regulation to be waived and the basis for the request. The Indian tribe or tribal organization shall explain the intended effect of the waiver, the

impact upon the Indian tribe or tribal organization if the waiver is not granted, and the specific contract(s) to which the waiver will apply.

§ 900.142 Does an Indian tribe or tribal organization's waiver request have to be included in an initial contract proposal?

No. Although a waiver request may be included in a contract proposal, it can also be submitted separately.

§ 900.143 How is a waiver request processed?

The Secretary shall approve or deny a waiver within 90 days after the Secretary receives a written waiver request. The Secretary's decision shall be in writing. If the requested waiver is denied the Secretary shall include in the decision a full explanation of the basis for the decision.

§ 900.144 What happens if the Secretary makes no decision within the 90-day period?

The waiver request is deemed approved.

§ 900.145 On what basis may the Secretary deny a waiver request?

Consistent with section 107(e) of the Act, the Secretary may only deny a waiver request based on a specific written finding. The finding must clearly demonstrate (or be supported by controlling legal authority) that if the waiver is granted:

(a) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) adequate protection of trust resources is not assured;

(c) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) the program, function, service, or activity (or portion of it) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities that are contractible under the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.146 Is technical assistance available?

Yes. In accordance with section 102(b) of the Act (and in accordance with section 103(d), to the extent a waiver request is included in a proposal for a new self-determination contract), the Secretary shall provide the Indian tribe or tribal organization with any necessary requested technical assistance to prepare a waiver request or to overcome any stated objection which the Secretary might have to the request.

§ 900.147 What appeal rights are available?

If the Secretary denies a waiver request, the Indian tribe or tribal organization has the right to appeal the decision and request a hearing on the record under the procedures for hearings and appeals contained in subpart L of these regulations. Alternatively, the Indian tribe or tribal organization may sue in Federal district court to challenge the Secretary's action.

§ 900.148 How can an Indian tribe or tribal organization secure a determination that a law or regulation has been superseded by the indian self-determination act, as specified in section 107(b) of the Act?

Any Indian tribe or tribal organization may at any time submit a request to the Secretary for a determination that any law or regulation has been superseded by the Act and that the law has no applicability to any contract or proposed contract under the Act. The Secretary is required to provide an initial decision on such a request within 90 days after receipt. If such a request is denied, the Indian tribe or tribal organization may appeal under subpart L of these regulations. The Secretary shall provide notice of each determination made under this subpart to all Indian tribes and tribal organizations.

Subpart L—Appeals (Other Than Emergency Reassumption and Suspension, Withholding Or Delay In Payment)

§ 900.150 What decisions can an Indian tribe or tribal organization appeal under this subpart?

(a) a decision to decline to award a self-determination contract, or a portion thereof, under section 102 of the Act;

(b) a decision to decline to award a construction contract, or a portion thereof, under sections 105(m) and 102 of the Act.

(c) a decision to decline a proposed amendment to a self-determination contract, or a portion thereof, under section 102 of the Act;

(d) a decision not to approve a proposal, in whole or in part, to redesign a program;

(e) a decision to rescind and reassume a self-determination contract, in whole or in part, under section 109 of the Act except for emergency reassumptions;

(f) a decision to refuse to waive a regulation under section 107(e) of the Act;

(g) a disagreement between an Indian tribe or tribal organization and the Federal government over proposed reporting requirements; or

(h) a decision to refuse to allow you to convert a contract to mature status, under section 4(h) of the Act.

(i) all other appealable pre-award decisions by a Federal official as specified in these regulations, whether an official of the Department of the Interior or the Department of Health and Human Services.

§ 900.151 Are there any appeals this part does not cover?

Yes. This subpart does not cover:

(a) disputes which arise after a self-determination contract has been awarded, or emergency reassumption of self-determination contracts or suspension of payments under self-determination contracts, which are covered under § 900.170 through § 900.176 of these regulations.

(b) other post-award contract disputes, which are covered under subpart N.

(c) denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR 2 for the Department of the Interior and 45 CFR 5 for the Department of Health and Human Services; and

(d) decisions relating to the award of discretionary grants under section 103 of the Act, which may be appealed under 25 CFR 2 for the Department of the Interior, and under 45 CFR 5 for the Department of Health and Human Services.

§ 900.152 How does an Indian tribe or tribal organization know where and when to file its appeal?

Every decision in any of the nine areas listed above shall contain information which shall tell you where and when to file your appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR ____, or appeal this decision under 25 CFR ____. Should you decide to appeal this decision to the Interior Board of Indian Appeals (IBIA) under 25 CFR ____, you may request a hearing on the record. The IBIA will determine whether you are entitled to such a hearing under 25 CFR ____. An appeal to the IBIA under 25 CFR ____ shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision

is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.153 Does an Indian tribe or tribal organization have any options besides an appeal?

Yes. You may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal hearing. You may also choose to sue in U.S. District Court under section 102(b)(3) and section 110(a) of the Act.

§ 900.154 How does an Indian tribe or tribal organization request an informal conference?

You shall file your request for an informal conference with the office of the person whose decision you are appealing, within 30 days of the day you receive the decision. You may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If you mail the request, it will be considered filed on the date you mailed it by certified mail.

§ 900.155 How is an informal conference held?

(a) The informal conference shall be held within 30 days of the date the request was received, unless the Indian tribe or tribal organization and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian tribe or tribal organization's office. If the meeting cannot be held at your office, and is held more than fifty miles from your office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only people who are your designated representatives, or authorized by the Secretary of Health and Human Services or by the appropriate agency of the Department of the Interior, are allowed to make presentations at the informal conference.

§ 900.156 What happens after the informal conference?

(a) Within 10 days of the informal conference, the person who conducted the informal conference shall prepare and mail you a written report which summarizes what happened at the informal conference and a recommended decision.

(b) Every report of an informal conference shall contain the following language:

Within 30 days of the receipt of this recommended decision, you may file an appeal of the initial decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR ____. You may request a hearing on the record. The IBIA will determine whether you are entitled to such a hearing under 25 CFR ____. An appeal to the IBIA under 25 CFR ____ shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.157 Is the recommended decision always final?

No. If you are dissatisfied with the recommended decision, you may still appeal the initial decision within 30 days of receiving the recommended decision and the report of the informal conference. If you do not file a notice of appeal within 30 days or the extension you have been granted under § 900.159, the recommended decision becomes final.

§ 900.158 How does an Indian tribe or tribal organization appeal the initial decision, if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

(a) If you decide to appeal, you shall file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision.

(b) You may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If you mail the Notice of Appeal, it will be considered filed on the date you mailed it by certified mail. You should mail the notice of appeal to: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

(c) The notice of appeal shall:

(1) Briefly state why you think the initial decision is wrong;

(2) Briefly identify the issues involved in the appeal; and

(3) State whether you want a hearing on the record, or whether you want to waive your right to a hearing.

(d) You shall serve a copy of the notice of appeal upon the official whose decision you are appealing. You shall certify to the IBIA that you have done so.

(e) The authorized representative of the Secretary of Health and Human Services or the authorized representative of the Secretary of the Interior will be considered a party to all appeals filed with the IBIA under the Act.

§ 900.159 May an Indian tribe or tribal organization get an extension of time to file a notice of appeal?

Yes. If you need more time, you can request an extension of time to file your Notice of Appeal within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. Your request shall be in writing, and shall give a good reason for not filing your notice of appeal within the 30-day time period. If you have a good reason for not filing your notice of appeal on time, you may receive an extension from the IBIA.

§ 900.160 What happens after an Indian tribe or tribal organization files an appeal?

(a) Within five days of receiving your notice of appeal, the IBIA will decide whether your appeal falls under § 900.150(a) through § 900.150(g) and you are entitled to a hearing.

(1) If the IBIA determines that your appeal falls under § 900(h) or § 900.150(i) and you have requested a hearing, the IBIA will grant your request for a hearing unless it determines that there are no genuine issues of material fact to be resolved.

(2) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements from the Indian tribe or tribal organization, or from the appropriate Federal agency. If the IBIA asks for more statements, it will make its decision within five days of receiving those statements.

(b) If the IBIA decides that you are not entitled to a hearing or if you have waived your right to a hearing on the record, the IBIA will ask for the administrative record under 43 CFR 4.335. The IBIA shall tell the parties that the appeal will be considered under the regulations at 43 CFR 4, subpart D, except the case shall be docketed immediately, without waiting for the 20-day period described in 43 CFR 4.336.

§ 900.161 How is a hearing arranged?

(a) If a hearing is to be held, the IBIA will refer your case to the Hearings Division of the Office of Hearings and Appeals of the U.S. Department of the Interior. The case will then be assigned to an Administrative Law Judge (ALJ), appointed under 5 U.S.C. 3105.

(b) Within 15 days of the date of the referral, the ALJ will hold a pre-hearing conference, by telephone or in person, to decide whether an evidentiary hearing is necessary, or whether it is possible to decide the appeal based on the written record. At the pre-hearing conference the ALJ will provide for:

(1) a briefing and discovery schedule;

(2) a schedule for the exchange of information, including, but not limited to witness and exhibit lists, if an evidentiary hearing is to be held;

(3) the simplification or clarification of issues;

(4) the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if an evidentiary hearing is to be held;

(5) the possibility of agreement disposing of all or any of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(c) The ALJ shall order a written record to be made of any conference results that are not reflected in a transcript.

§ 900.162 What happens when a hearing is necessary?

(a) The ALJ shall hold a hearing within 60 days of the date of the order referring the appeal to the ALJ, unless the parties agree to have the hearing on a later date.

(b) At least 30 days before the hearing, the government agency shall file and serve you with a response to the notice of appeal.

(c) If the hearing is held more than 50 miles from the Indian tribe or tribal organization's office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(d) The hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.163 What is the Secretary's burden of proof for appeals from decisions under § 900.150(a) through § 900.150(g)?

For those appeals, the Secretary has the burden of proof (as required by section 102(e)(1) of the Act) to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.

§ 900.164 What rights do Indian tribes, tribal organizations, and the government have during the appeal process?

Both the Indian tribe or tribal organization and the government agency have the same rights during the appeal process. These rights include the right to:

(a) be represented by legal counsel;

(b) have the parties provide witnesses who have knowledge of the relevant issues, including specific witnesses with that knowledge, who are requested by either party;

(c) cross-examine witnesses;

(d) introduce oral or documentary evidence, or both;

(e) require that oral testimony be under oath;

(f) receive a copy of the transcript of the hearing, and copies of all documentary evidence which is introduced at the hearing;

(g) compel the presence of witnesses, or the production of documents, or both, by subpoena at hearings or at depositions;

(h) take depositions, to request the production of documents, to serve interrogatories on other parties, and to request admissions; and

(i) any other procedural rights under the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.165 What happens after the hearing?

(a) Within 30 days of the end of the formal hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all the parties a recommended decision, by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that you have the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR ____. An appeal to the Secretary under 25 CFR ____ shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC, 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR ____. An appeal to the IBIA under 25 CFR ____ shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

§ 900.166 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision. Objections shall be served on all other parties. The recommended decision shall become final 30 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 30-day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final.

§ 900.167 If an Indian tribe or tribal organization object to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary of Health and Human Services or the IBIA has 20 days from the date it receives any timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary of Health and Human Services or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or the IBIA shall:

(1) be in writing;

(2) specify the findings of fact or conclusions of law which are modified or reversed;

(3) give reasons for the decision, based on the record; and

(4) state that the decision is final for the Department.

§ 900.168 Will an appeal hurt the Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.169 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

Appeals of Emergency Reassumption of Self-Determination Contracts or Suspension, Withholding or Delay of Payments Under a Self-Determination Contract

§ 900.170 What happens in the case of emergency reassumption or suspension or withholding or delay of payments?

(a) This subpart applies when the Secretary gives notice to an Indian tribe or tribal organization that the Secretary intends to:

(1) immediately rescind a contract or grant and reassume a program; or

(2) suspend, withhold, or delay payment under a contract.

(b) When the Secretary advises an Indian tribe or tribal organization that the Secretary intends to take an action referred to in paragraph (1) above, the Secretary shall also notify the Deputy Director of the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

§ 900.171 Will there be a hearing?

Yes. The Deputy Director of the Office of Hearings and Appeals shall appoint an Administrative Law Judge (ALJ) to hold a hearing.

(a) The hearing shall be held within 10 days of the date of the notice referred to in § 900.170 unless the Indian tribe or tribal organization agrees to a later date.

(b) If possible, the hearing will be held at the office of the Indian tribe or tribal organization. If the hearing is held more than 50 miles from the Indian tribe's or tribal organization's office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Indian tribe or tribal organization.

§ 900.172 What happens after the hearing?

(a) Within 30 days after the end of the hearing or any post hearing briefing schedule established by the ALJ, the ALJ shall send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that you have the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR ____. An appeal to the Secretary under 25 CFR ____ shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR ____. An appeal to the IBIA under 25 CFR ____ shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

§ 900.173 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 15 days of receiving the recommended decision. You shall serve a copy of your objections on the other party. The recommended decision will become final 15 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

§ 900.174 If an Indian tribe or tribal organization object to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary or the IBIA has 15 days from the date he/she receives timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) the decision of the Secretary or of the IBIA shall:

(1) be in writing;

(2) specify the findings of fact or conclusions of law which are modified or reversed;

(3) give reasons for the decision, based on the record; and

(4) state that the decision is final for the Department.

§ 900.175 Will an appeal hurt an Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.176 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

Subpart M—Federal Tort Claims Act Coverage

General Provisions

§ 900.180 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) coverage of claims arising out of the performance of medical-related functions under self-determination contracts;

(b) coverage of claims arising out of the performance of non-medical-related functions under self-determination contracts; and

(c) procedures for filing claims under FTCA.

§ 900.181 What definitions apply to this subpart?

(a) *Indian contractor* means:

(1) in California subcontractors of the California Rural Indian Health Board, Inc., or, subject to approval of the IHS Director after consultation with the DHHS Office of General Counsel, subcontractors of an Indian tribe or tribal organization which are:

(i) governed by Indians eligible to receive services from the Indian Health Service;

(ii) which carry out comprehensive IHS service programs within geographically defined service areas; and

(iii) which are selected and identified through tribal resolution as the local provider of Indian health care services; or

(2) subject to the approval of the IHS Director after consultation with the DHHS Office of General Counsel, tribes and tribal organizations which meet in all respects the requirements of the Indian Self-Determination Act to contract directly with the Federal

Government but which choose through tribal resolution to sub-contract to carry out IHS service programs within geographically defined service areas with another Indian tribe or tribal organization which contracts directly with IHS.

(b) *Self-determination contract* or *contract* means contracts, annual funding agreements, grants and cooperative agreements under Title I of the Act.

§ 900.182 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 900.183 Do Indian tribes and tribal organizations need to be aware of areas which FTCA does not cover?

Yes. There are claims against self-determination contractors which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. General guidance is provided below as to these matters but is not intended as a definitive description of coverage which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) What claims are barred by FTCA and therefore may not be made against the United States, an Indian tribe or tribal organization? Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) What claims may not be pursued under FTCA but may be pursued under other provisions of law?

(1) Except as provided in § 900.181(a)(1) and § 900.189, claims against sub-contractors arising out of the performance of subcontracts with a self-determination contractor;

(2) claims for on-the-job injuries which are covered by workmen's compensation;

(3) claims for breach of contract rather than tort claims;

(4) a claim which is brought for violation of the Constitution of the United States; or

(5) a claim which is brought for a violation of a statute of the United States under which an action against an individual is otherwise authorized.

(c) What remedies are excluded by FTCA and therefore are barred?

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) other remedies not permitted under applicable State law.

§ 900.184 Is there a deadline for filing FTCA claims?

Yes. Claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 900.185 How long does the Federal government have to process an FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

Six months.

§ 900.186 Is it necessary for a self-determination contract to include any clauses about Federal Tort Claims Act coverage?

No, it is optional. At the request of Indian tribes and tribal organizations, self-determination contracts shall include the following clauses to clarify the scope of FTCA coverage:

(a) For purposes of Federal Tort Claims Act coverage, the contractor and its employees (including individuals performing personal services contracts with the contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

(b) *The following clause is for IHS contracts only:* Under this contract, the contractor's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either contractor or non-contractor facilities. The employee's status for Federal Tort Claims Act purposes is not affected.

§ 900.187 Does FTCA apply to a self-determination contract if FTCA is not referenced in the contract?

Yes.

§ 900.188 To what extent shall the contractor cooperate with the Federal government in connection with tort claims arising out of the contractor's performance?

(a) The contractor shall designate an individual to serve as tort claims liaison with the Federal government.

(b) The contractor shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the contractor or any of its employees that relates to performance of a self-determination contract. This includes, but is not limited to, the performance of any subcontract.

(c) The contractor, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) the date, time and exact place of the accident or incident;

(2) a concise and complete statement of the circumstances of the accident or incident;

(3) the names and addresses of tribal and/or Federal employees involved as participants or witnesses;

(4) the names and addresses of all other eye witnesses;

(5) an accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) a statement whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) the contractor's determination whether any of its employees involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred; and

(8) copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency.

(d) The contractor shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the contractor shall make an assignment and subrogation of all the contractor's riconstrucghts and claims (except those against the Federal government) arising out of a tort claim against the contractor.

(f) If requested by the Secretary, the contractor shall authorize representatives of the Secretary to settle or defend any tort claim and to represent the contractor in or take

charge of any action. If the Federal government undertakes the settlement or defense of any claim or action the contractor shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 900.189 Does this coverage extend to subcontractors of self-determination contracts?

No. Subcontractors or subgrantees providing services to the Public Law 93–638 contractor or grantee are generally not covered. The only exceptions are Indian contractors such as those under subcontract with the California Rural Indian Health Board to carry out IHS programs in geographically defined service areas in California and personal services contracts under § 900.193 (for § 900.183(b)(1)) or § 900.183(b) (for § 900.190).

Medical-Related Claims

§ 900.190 Is FTCA the exclusive remedy for a tort claim for personal injury or death resulting from the performance of a self-determination contract?

Yes, except as explained in § 900.183(b). No claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the Act. All such claims shall be filed against the United States and are subject to the limitations and restrictions of that Act.

§ 900.191 Are employees of self-determination contractors providing health services under the self-determination contract protected by FTCA?

Yes. For the purpose of Federal Tort Claims Act coverage, an Indian tribe or tribal organization and its employees performing medical-related functions under a self-determination contract are deemed a part of the Public Health Service if the employees are acting within the scope of their employment in carrying out the contract.

§ 900.192 What employees are covered by FTCA for medical-related claims?

(a) Permanent employees;

(b) temporary employees;

(c) persons providing services without compensation in carrying out a contract; and

(d) persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor).

§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by a tribe or tribal organization but operated under a self-determination contract with IHS.

§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?

Yes, as long as the contractor's health care practitioners do not receive additional compensation for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

(a) Cross-covering other medical personnel who temporarily cannot attend their patients;

(b) assisting other personnel with surgeries or other medical procedures;

(c) assisting with unstable patients or at deliveries; or

(d) assisting in any patient care situation where additional assistance by health care personnel is needed.

§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel receive the fee, not the self-determination contractor?

No.

§ 900.196 Do covered services include the conduct of clinical studies and investigations and the provision of emergency services, including the operation of emergency motor vehicles?

Yes, if the services are provided in carrying out a self-determination contract.

§ 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the self-determination contract?

Yes, as long as the services out of which the claim arose were performed in carrying out the self-determination contract.

§ 900.198 Are Federal employees assigned to a self-determination contractor under the Intergovernmental Personnel Act or detailed under section 214 of the Public Health Service Act covered to the same extent that they would be if working directly for a Federal agency?

Yes.

§ 900.199 Does FTCA coverage extend to a contractor's health care practitioners to whom staff privileges have been extended in contractor health care facilities operated under a self-determination contract on the condition that such practitioner provide health services to IHS beneficiaries covered by FTCA?

Yes, health care practitioners with staff privileges in a facility operated by a contractor are covered when they perform services to IHS beneficiaries. Such personnel are not covered when providing services to non-IHS beneficiaries.

§ 900.200 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes. Non-Indian individuals who otherwise are eligible for services from IHS in accordance with Federal law and regulations, whether or not on a fee-for-service basis, may assert claims under this subpart.

Procedure for Filing Medical-Related Claims

§ 900.201 How should claims arising out of the performance of medical-related functions be filed?

Claims should be filed on Standard Form 95 (Claim for Damage, Injury or Death) or by submitting comparable written information (including a definite amount of monetary damage claimed) with the Chief, PHS Claims Branch, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or such other address as shall have been provided to the contractor in writing.

§ 900.202 What should a self-determination contractor or a contractor's employee do on receiving such a claim?

You should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

§ 900.203 If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?

You should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201, and the contractor's tort claims liaison, and forward the following materials:

(a) four copies of the claimant's medical records of treatment, inpatient and outpatient, and any related correspondence, as well as reports of consultants;

(b) a narrative summary of the care and treatment involved;

(c) the names and addresses of all personnel who were involved in the care and treatment of the claimant; and

(d) any comments or opinions that the employees who treated the claimant believe to be pertinent to the allegations contained in the claim.

Non-Medical Related Claims

§ 900.204 Is FTCA the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract?

Except as explained in § 900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type shall be filed against the United States under FTCA.

§ 900.205 To what non-medical-related claims against self-determination contractors does FTCA apply?

It applies to:

(a) all tort claims arising from the performance of self-determination contracts under the authority of the Act on or after October 1, 1989; and

(b) any tort claims first filed on or after October 24, 1989, regardless of when the incident which is the basis of the claim occurred.

§ 900.206 Does FTCA cover employees of self-determination contractors?

Yes. A contractor and its employees carrying out a self-determination contract are considered part of the Public Health Service or the Department of the Interior, as the case may be, for FTCA purposes.

§ 900.207 How are non-medical related tort claims and lawsuits filed for IHS?

Non-medical-related tort claims and lawsuits arising out of the performance of self-determination contracts with the Indian Health Service should be filed in the manner described in § 900.201 (for both § 900.207 and § 900.208).

§ 900.208 How are non-medical related tort claims and lawsuits filed for DOI?

Non-medical-related claims arising out of the performance of self-determination contracts with the Secretary of the Interior should be filed in the manner described with the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240.

§ 900.209 What should a self-determination contractor or contractor's employee do on receiving a non-medical related tort claim?

(a) If the contract is with DHHS, you should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

(b) If the contract is with DOI, you should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240.

§ 900.210 If the contractor or contractor's employee receives a summons and/or complaint alleging a non-medical related tort covered by FTCA, what should a tribe or tribal organization do?

(a) If the contract is with the DHHS, you should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201 and the contractor's tort claims liaison.

(b) If the contract is with the Department of the Interior, you should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240, and the contractor's tort claims liaison.

Subpart N—Post-Award Contract Disputes

§ 900.215 What does this subpart cover?

(a) This subpart covers:

(1) all HHS and DOI self-determination contracts, including construction contracts; and

(2) all disputes regarding an awarding official's decision relating to a self-determination contract.

(b) This subpart does not cover the decisions of an awarding official that are covered under subpart L.

§ 900.216 What other statutes and regulations apply to contract disputes?

(a) The Contract Disputes Act of 1978 (CDA), Public Law 95–563 (41 U.S.C. 601); and

(b) If the matter is submitted to the Interior Board of Contract Appeals, 43 CFR 4, subpart C, §§ 4.110–126.

§ 900.217 Is filing a claim under the CDA our only option for resolving post-award contract disputes?

No. The Federal government attempts to resolve all contract disputes by agreement at the awarding official's level. These are alternatives to filing a claim under the CDA:

(a) Before issuing a decision on a claim, the awarding official should consider using informal discussions between the parties, assisted by individuals who have not substantially participated in the matter, to aid in resolving differences.

(b) In addition to filing a CDA claim, or instead of filing a CDA claim, the parties may choose to use an alternative dispute resolution mechanism, pursuant to the provisions of the Administrative Dispute Resolution Act, Public Law 101–552, 5 U.S.C. 581 *et seq.*, and section 108(1)(b)(12) of the Act, as applicable.

§ 900.218 What is a claim under the CDA?

(a) A claim is a written demand by one of the contracting parties, asking for one or more of the following:

(1) payment of a specific sum of money under the contract;

(2) adjustment or interpretation of contract terms; or

(3) any other claim relating to the contract.

(b) However, an undisputed voucher, invoice, or other routing request for payment is not a claim under the CDA. A voucher, invoice, or routing request for payment may be converted into a CDA claim if:

(1) It is disputed as to liability or amount; or

(2) It is not acted upon in a reasonable time; and

(c) Written notice of the claim is given to the awarding official by the senior official designated in the contract.

§ 900.219 How does an Indian tribe or tribal organization submit a claim?

(a) If you are an Indian tribe or tribal organization, you shall submit your claim in writing to the awarding official. The awarding official shall document the contract file with evidence of the date the claim was received.

(b) If you are a Federal agency, you shall submit your claim in writing to the contractor's senior official, as designated in the contract.

§ 900.220 Does it make a difference whether the claim is large or small?

Yes. An Indian tribe or tribal organization making a claim for more than $100,000, shall certify that:

(a) the claim is made in good faith,

(b) supporting documents or data are accurate and complete;

(c) the amount claimed accurately reflects the amount believed to be owed by the Federal government; and

(d) the person making the certification is authorized to do so on behalf of the Indian tribe or tribal organization.

§ 900.221 What happens next?

(a) If the parties do not agree on a settlement, the awarding official will issue a written decision on the claim.

(b) The awarding official shall always give a copy of the decision to the Indian tribe or tribal organization by certified mail, return receipt requested, or by any other method which provides a receipt.

§ 900.222 What goes into a decision?

A decision shall:

(a) describe the claim or dispute;

(b) refer to the relevant terms of the contract;

(c) set out the factual areas of agreement and disagreement;

(d) set out the actual decision, based on the facts, and outline the reasoning which supports the decision; and

(e) contain the following language:

This is a final decision. You may appeal this decision to the Interior Board of Contract Appeals (IBCA), U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. If you decide to appeal, you shall, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the IBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the IBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within 12 months of the date you receive this notice.

§ 900.223 When does an Indian tribe or tribal organization get the Secretary's decision?

(a) If the claim is for more than $100,000, the awarding official shall issue the decision within sixty days of the day he or she receives the claim. If the awarding official cannot issue a decision that quickly, he or she shall tell you when the decision will be issued.

(b) If the claim is for $100,000 or less, and you want a decision within 60 days, you shall advise the awarding official in writing that you want a decision within that period. If you advise the awarding official in writing that you do want a decision within 60 days, the awarding official shall issue the decision within 60 days of the day he or she receives your written notice.

(c) If your claim is for $100,000 or less and you do not advise the awarding official that you want a decision within 60 days, or if your claim exceeds $100,000 and the awarding official has notified you of the time within which a decision will be issued, the awarding official shall issue a decision within a reasonable time. What is ''reasonable'' depends upon the size and complexity of your claim, and upon the adequacy of the information you have given to the awarding official in support of your claim.

§ 900.224 What happens if the decision does not come within that time?

If the awarding official does not issue a decision within the required time, the Indian tribe or tribal organization may treat the delay as though the awarding official has denied the claim, and proceed according to § 900.222(e), above.

§ 900.225 Does an Indian tribe or tribal organization get paid immediately if the awarding official decides in its favor?

Yes. Once the awarding official decides that money should be paid under the contract, the amount due, minus any portion already paid, should be paid as promptly as possible, without waiting for either party to file an appeal. Any payment which is made under this subsection will not affect any other rights either party might have. In addition, it will not create a binding legal precedent as to any future payments.

§ 900.226 Can the awarding official change the decision after it has been made?

(a) The decision of the awarding official is final and conclusive, and not subject to review by any forum, tribunal or government agency, unless an appeal or suit is timely commenced as authorized by the Contract Disputes Act. Once the decision has been made, the awarding official may not change it, except by agreement of the parties, or under the following limited circumstances:

(1) if evidence is discovered which could not have been discovered through due diligence before the awarding official issued the decision;

(2) if the awarding official learns that there has been fraud, misrepresentation, or other misconduct by a party;

(3) if the decision is beyond the scope of the awarding official's authority;

(4) if the claim has been satisfied, released or discharged; or

(5) for any other reason justifying relief from the decision.

(b) Nothing in this subpart shall be interpreted to discourage settlement discussions or prevent settlement of the dispute at any time.

(c) If an appeal or suit is filed, the awarding official may modify or withdraw his or her final decision.

§ 900.227 Is an Indian tribe or tribal organization entitled to interest if it wins its claim?

Yes. If you win the claim, you will be entitled to interest on the amount of the award. The interest will be calculated from the date the awarding official receives the claim until the day you are paid. The interest rate will be the rate which the Secretary of the Treasury sets for the Renegotiation Board under the Renegotiation Act of 1951, Public Law 92–41, 26 U.S.C. 1212 and 26 U.S.C. 7447.

§ 900.228 What role will the awarding official play during an appeal?

(a) The awarding official shall provide any data, documentation, information or support required by the IBCA for use in deciding a pending appeal.

(b) Within 30 days of receiving an appeal or learning that an appeal has been filed, the awarding official shall assemble a file which contains all the documents which are pertinent to the appeal, including:

(1) the decision and findings of fact from which the appeal is taken;

(2) the contract, including specifications and pertinent modifications, plans and drawings;

(3) all correspondence between the parties which relates to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) transcripts of any testimony taken during the course of the proceedings, and affidavits or statements of any witnesses on the matter in dispute, which were made before the filing of the notice of appeal with the IBCA; and

(5) any additional information which may be relevant.

§ 900.229 What is the effect of a pending appeal?

(a) Indian tribes and tribal organizations shall continue performance of a contract during the appeal of any claims to the same extent they would had there been no dispute.

(b) A pending dispute will not affect or bar the negotiation or award of any subsequent contract or negotiation between the parties.

Subpart 0—Retrocession and Reassumption Procedures

§ 900.230 What does retrocession mean?

A retrocession means the return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

§ 900.231 Who may retrocede a contract, in whole or in part?

An Indian tribe or tribal organization authorized by an Indian tribe.

§ 900.232 What effect will an Indian tribe or tribal organization's retrocession have on its rights to contract?

An Indian tribe or tribal organization's retrocession shall not negatively affect:

(a) any other contract to which it is a party;

(b) any other contracts it may request; and

(c) any future request by the Indian tribe or tribal organization to contract for the same program.

§ 900.233 Will an Indian tribe or tribal organization's retrocession adversely affect funding available for the retroceded program?

No. The Secretary shall provide not less than the same level of funding that would have been available if there had been no retrocession.

§ 900.234 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the Indian tribe or tribal organization shall, at the request of the Secretary deliver to the Secretary all property and equipment provided under the contract which have a per item value in excess of $5,000 at the time of the retrocession.

§ 900.235 What does reassumption mean?

Reassumption means recision, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization. There are two types of reassumption: emergency and non-emergency.

§ 900.236 Under what circumstances is a reassumption considered an emergency instead of non-emergency reassumption?

(a) A reassumption is considered a non-emergency reassumption if there has been:

(1) a violation of the rights or endangerment of the health, safety, or welfare of any person; or

(2) gross negligence or mismanagement in the handling or use of: (i) Contract funds; (ii) trust funds; (iii) trust lands; or (iv) interests in trust lands under the contract.

(b) A reassumption is considered an emergency reassumption if an Indian tribe or tribal organization fails to fulfill the requirements of the contract and this failure poses:

(1) an immediate threat of imminent harm to the safety of any person; or

(2) imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.

§ 900.237 In a non-emergency reassumption, what is the Secretary required to do?

(a) notify the Indian tribes or tribal organizations served by the contract and the contractor in writing by certified mail of the details of the deficiencies in contract performance; and

(b) request specified corrective action to be taken within a reasonable period of time, which in no case may be less than 45 days; and

(c) offer and provide, if requested, the necessary technical assistance and advice to assist the contractor to overcome the deficiencies in contract performance.

§ 900.238 What happens if the contractor fails to take corrective action to remedy the contract deficiencies identified in the notice?

The Secretary shall provide a second written notice by certified mail to the Indian tribes or tribal organizations served by the contract and the contractor that the contract will be rescinded, in whole or in part.

§ 900.239 What shall the second written notice include?

The second written notice shall include:

(a) the intended effective date of the reassumption;

(b) the details and facts supporting the intended reassumption; and

(c) instructions that explain the Indian tribe or tribal organization's right to a formal hearing within 30 days of receipt of the notice.

§ 900.240 What is the earliest date on which the contract will be rescinded?

The contract will not be rescinded by the Secretary before the completion of any administrative hearing or appeal.

§ 900.241 In an emergency reassumption, what is the Secretary required to do?

(a) immediately rescind, in whole or in part, the contract;

(b) assume control or operation of all or part of the program; and

(c) give written notice to the Contractor and the Indian tribes or tribal organizations served.

§ 900.242 What shall the written notice include?

(a) A detailed statement of the findings which support the Secretary's determination;

(b) a statement explaining the contractor's right to a hearing on the record under § 900.160 and § 900.161 within 10 days of the emergency reassumption or such later date as the contractor may approve;

(c) an explanation that the contractor may be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of the recision; and

(d) a request for the return of property, if any.

§ 900.243 May the contractor be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of recision?

Yes.

§ 900.244 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the rescinded contract?

On the effective date of any recision, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all property and equipment provided under the contract which have a per item value in excess of $5,000 at the time of the recision.

§ 900.245 Will a reassumption adversely affect funding available for the reassumed program?

No. The Secretary shall provide not less than the same level of funding that would have been provided if there had been no reassumption.

[FR Doc. 96–497 Filed 1–23–96; 8:45 am]

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Federal Register

Wednesday
January 24, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 1

Definitions of Special Use Airspace; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 25767; Amdt. 1–42]

RIN 2120–AF92

Definitions of Special Use Airspace

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends the Federal Aviation Regulations by adding the definitions of the various forms of special use airspace. Several categories of special use airspace currently are defined other than in the Regulations. This rule is needed to consolidate and define those categories in a single part, including the definitions of warning area and non-regulatory warning area found in Special Federal Aviation Regulation (SFAR) No. 53.

EFFECTIVE DATE: January 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA has determined that for purposes of clarification and conformity, it would be appropriate to include in part 1, Definitions and Abbreviations, the definitions of all categories of special use airspace. Special use airspace is defined in 14 CFR Section 73.3(a) as airspace of defined dimensions wherein activities must be confined because of their nature, or wherein limitations are imposed upon aircraft operations that are not a part of those activities, or both. With the exception of ''warning area,'' the definitions are the same definitions provided for these categories of airspace in the Aeronautical Information Manual and in FAA Order 7400.2, Procedures for Handling Airspace Matters. The codification of these currently accepted definitions into part 1 does not in any way affect the provisions that apply to these areas that are contained in parts 73 and 91. Nor does the inclusion of the definitions in part 1 impose any new operating restrictions.

In addition, this rule redefines the term ''warning area,'' by consolidating the definitions of ''warning area'' and ''non-regulatory warning area'' found in SFAR 53 and codifies that term in part 1. Warning areas are defined in SFAR 53 as airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of this United States, which contain activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. This rule consolidates this definition with the definition of non-regulatory warning area found in SFAR 53. A non-regulatory warning area is an airspace of defined dimensions designated over international waters that contains activity which may be hazardous to nonparticipating aircraft. The FAA believes that combining the definition of a warning area with the definition of a non-regulatory warning area into a single definition is appropriate since the procedures that apply to these two areas are the same.

Presidential Proclamation No. 5928, issued on December 27, 1988, extended the sovereignty of the United States, for international purposes, over the territorial seas from 3 to 12 nautical miles from the coast of the United States (including its territories). Prior to Presidential Proclamation No. 5928, warning areas were only designated in international waters. SFAR 53, promulgated in response to Proclamation No. 5928, designated warning areas in domestic airspace. This rule defines a warning area as an area of airspace of defined dimension, extending from 3 nautical miles outward from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft.

This rule will not alter any of the existing warning areas. The FAA does not envision any future additional warning areas or enlargement of the existing warning areas in domestic airspace. If new airspace areas are needed in domestic airspace, the FAA will work with the proponent to establish the appropriate domestic special use airspace, i.e. military operations area (MOA), Restricted area, or Prohibited area.

I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to avoid confusion on the part of pilots operating in these types of airspace.

Discussion of Comments

Two comments were received from the Air Line Pilots Association (ALPA) and the Air Traffic Control Association, Inc. (ATCA). ALPA and ATCA support the proposed amendment to part 1 as provided in the notice of proposed rulemaking (60 FR 58494, Nov. 27, 1995).

The Rule

This amendment to 14 CFR part 1, Definitions and Abbreviations, to include the definitions of all types of special use airspace. Except for ''warning areas,'' the definitions are the same definitions of the categories of special use airspace found in the Aeronautical Information Manual and FAA Order 7400.2, Procedures for Handling Airspace Matters and are familiar to and accepted by the flying community. The inclusion of these definitions in part 1 does not affect any provision currently contained in parts 73 and 91. Further, the inclusion of these definitions does not add any requirement or operating restriction to these categories of special use airspace. This rule also codifies the definition of warning area. As noted above, the definition of warning area will consolidate the definitions in SFAR 53 into a single definition of a warning area that applies to domestic airspace located from 3 to 12 nautical miles from the U.S. coast, as well as international airspace beyond the 12 nautical mile boundary from the coast.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization Standards and Recommended Practices (SARP) to the maximum extent practicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–5111), there are no requirements for information collection associated with this regulation.

Regulatory Evaluation

This rule does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This regulation merely adds a section of currently accepted definitions in 14 CFR part 1 without making any substantive revision to parts 73 and 91. Accordingly, because the costs of the rule are minimal or non-existent, a formal regulatory evaluation has not been prepared.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and

disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have a significant economic impact on a substantial number of small entities.

The regulation will not alter the provision of air traffic control (ATC) services, nor will it have an impact on ATC system users. Hence, regulation will not impose a significant cost on a substantial number of small entities.

Federalism Implications

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

International Trade Impact Assessment

This rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States. This regulation will not impose costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by either U.S. operators abroad or foreign operators in the United States.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. In addition, the FAA certifies that this regulation 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. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A Regulatory Flexibility Determination and International Impact Assessment are set out above. Because the economic impact of this rule is minimal or non-existent, no formal regulatory evaluation has been prepared.

List of Subjects in 14 CFR Part 1

Air transportation, Federal Aviation Administration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 1 as follows:

PART 1—[AMENDED]

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

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

2. Section 1.1 is amended by revising the definitions of *Prohibited area* and *Restricted area* and by adding the remaining definitions to read as follows:

* * * * *

1.1 General definitions.

* * * * *

Alert Area. An alert area is established to inform pilots of a specific area wherein a high volume of pilot training or an unusual type of aeronautical activity is conducted.

* * * * *

Controlled Firing Area. A controlled firing area is established to contain activities, which if not conducted in a controlled environment, would be hazardous to nonparticipating aircraft.

* * * * *

Military operations area. A military operations area (MOA) is airspace established outside Class A airspace to separate or segregate certain nonhazardous military activities from IFR Traffic and to identify for VFR traffic where theses activities are conducted.

* * * * *

Prohibited area. A prohibited area is airspace designated under part 73 within which no person may operate an aircraft without the permission of the using agency.

* * * * *

Restricted area. A restricted area is airspace designated under Part 73 within which the flight of aircraft, while not wholly prohibited, is subject to restriction.

* * * * *

Warning area. A warning area is airspace of defined dimensions, extending from 3 nautical miles outward from the coast of the United States, that contains activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. A warning area may be located over domestic or international waters or both.

* * * * *

Issued in Washington, DC on January 18, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–922 Filed 1–19–96; 10:49 am]

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Federal Register

Wednesday
January 24, 1996

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 15

Importation of Exotic Wild Birds to the United States; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AC15

Importation of Exotic Wild Birds to the United States; Final Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This final rule would implement procedures for establishment of an approved list of non-captive-bred (wild-caught) species listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention) that can be imported.

DATES: This rule is effective February 23, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 420C, Arlington VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This final rule implements aspects of the WBCA, which was signed into law on October 23, 1992. This is the fourth of five rulemakings under the WBCA; the first final rulemaking under the WBCA was published in the Federal Register on November 16, 1993 (58 FR 60524). The second and third final rulemakings under the WBCA were published in the Federal Register on December 2, 1994 (59 FR 62255). The WBCA limits or prohibits imports of exotic bird species to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all imports of such species into the United States are biologically sustainable and not detrimental to the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin. The final rule of November 16, 1993, implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions.

During the one-year period immediately following enactment of the WBCA, from October 23, 1992, to October 22, 1993, import quotas were established for CITES-listed bird species. Those quotas were announced in the Federal Register on December 4, 1992 (57 FR 57510). A notice published on March 30, 1993 (58 FR 16644), solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input from the public for the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting and submitted comments in writing; that input has been used to develop this final rule. A notice published on April 16, 1993 (58 FR 19840), announced species for which the quotas had been met and no further individual birds could be imported.

Since the publication of the final rule of November 16, 1993, imports of all CITES-listed birds (as defined in the final rule) are prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved management plans for those species; or (d) specimens from approved foreign captive-breeding facilities. The U.S. Fish and Wildlife Service (Service) published a proposed rule in the Federal Register on March 17, 1994 (59 FR 12784), that would implement procedures for approval of foreign captive-breeding facilities, establishment of an approved list of captive-bred species listed in the CITES Appendices that can be imported without a WBCA permit and establishment of criteria for including non-captive-bred (wild-caught) species in the approved list.

As a result of a lawsuit filed on February 15, 1994, by the Humane Society of the United States and Defenders of Wildlife, and a resultant District Court Order that found a portion of the regulation in the November 16, 1993, Federal Register invalid, the Service, consistent with that Court Order, announced in the Federal Register on May 24, 1994 (59 FR 26810), that all exotic birds listed in Appendix III of CITES are covered by the automatic import moratorium of the WBCA, regardless of their country of origin. A proposed rule was published on June 3, 1994 (59 FR 28826), to promulgate that regulatory change and the final rule was published on Dec. 2, 1994 (59 FR 62254).

On Dec. 2, 1994 (59 FR 62255), a final rule was published which implemented procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that may be imported without a WBCA permit; those approved captive-bred species were those for which it has been determined that trade involves only captive-bred specimens.

This rule addresses the proposals made in the Federal Register of March 17, 1994, for the criteria for including species in the approved list of non-captive-bred species, with some modifications based on comments received and further analysis by the Service. This final rule establishes regulations called for in the WBCA that will accomplish the following: (1) For wild-caught CITES-listed birds to be on an approved list, the Service must determine that: CITES is being effectively implemented for the species for each country of origin from which imports will be allowed; CITES-recommended measures are implemented; there is a scientifically based management plan for the species that provides for the conservation of the species and its habitat, includes incentives for conservation, ensures that the use of the species is biologically sustainable and maintained throughout its range at a level consistent with its role in its ecosystem, and addresses factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health.

Comments and Information Received

The Service received roughly 1500 comments from the public, including over 1409 form letters from private aviculturists (bird breeders) and comments from 12 conservation and/or animal welfare organizations, 1 zoological organization, 4 scientific organizations, 1 representative of the pet industry, 2 private companies, 5 avicultural organizations, and 1 falconry/raptor breeder organization; the remaining comments were from other private individuals.

Comments of a General Nature

The Service proposed to consider only sustainable use management plans for Appendix II and III species since trade for primarily commercial purposes is not permitted under the Convention for Appendix I species. If specimens of

an Appendix I species are required for zoological, scientific, or breeding purposes, individuals or institutions desiring such import may apply for a permit under Subpart C of this Part 15.

Few comments were received opposing such a consideration for sustainable use. A few aviculturists objected because they consider Appendix I species to be the species most in need of conservation attention, and believe that the Service should allow for imports of Appendix I species under this provision of the WBCA. The Service recognizes the need to conserve these threatened and endangered species, and agrees that they are of the highest conservation priority. The Service notes however that approval to import wild-caught birds under a sustainable use management plan will allow commercial trade, and as such is inconsistent with both the intent and the requirements of CITES Appendix I. The Service disagrees that scientifically-based management plans can be submitted for commercial exports of Appendix I listed species. If individuals or organizations wish to import wild-caught specimens of an Appendix I species for zoological, scientific, or cooperative breeding programs, they already may apply for a permit for such an import under Subpart C of this Part 15.

Comments Pertaining to Section 15.30: Definitions

The Service has modified the definition of trend and the new language reflects the need to evaluate past experience as well as future projections in deterimining trend.

The Service notes that in the development of its definition of 'sustainable use' it drew upon IUCN draft guidelines for 'An Initial Procedure for Assessing the Sustainability of Uses of Wild Species'. These draft guidelines recommend that assessing the impacts of use should cover three factors: (1) Demographic sustainability or the impact of the use on the population being used (the use must be at a rate that is within the population's capacity for renewal); (2) ecological sustainability or the compatibility of a use with the quality and native diversity of the ecosystem; and (3) impacts of other factors (human activities and/or natural events) on the ecosystem. The Service has incorporated these concepts into a working definition of sustainable use.

Several commenters supported the definition of sustainable use while numerous commenters, including the pet industry, avicultural, animal welfare, and conservation organizations disagreed with the Service's proposed definition—''the use of a species in a manner and at a level such that populations of the species are maintained at optimal levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce and maintain itself''. They objected that the Service's use of ''optimal'' was vague and left the definition open-ended and subject to interpretation by the reader. The Service recognizes the extreme importance of the term ''sustainable use'' since the WBCA requires that the import of wild-caught birds must be biologically sustainable. The Service has modified its definition to remove any ambiguity, by replacing the term ''optimal levels'' with the term ''biologically viable levels''.

One conservation organization objected to the phrase ''long term'' in the sustainable use definition, arguing that interpretation of the phrase is open to debate as to the exact length of time meant in the definition. They would prefer a modifier ''biased toward the indefinite maintenance of viability, such as in perpetuity'' be added to the definition. The Service disagrees, in that such a modifier would be unnecessarily confusing. The phrase ''long term'' is sufficiently clear, as it refers to many generations and indeed many, many years. The Service considers it too extreme to require exporting countries to implement management plans that are designed to maintain a species at biologically viable levels in perpetuity.

Comments Pertaining to Section 15.32: Criteria for Including Non-Captive-bred Species in the Approved List

This section establishes the criteria for the inclusion of non-captive-bred (wild-caught) bird species in the approved list, thereby allowing their importation into the U.S. under the WBCA without needing WBCA import permits under Subpart C of this Part 15. Pursuant to Section 106 of the WBCA, the Secretary is required to publish a list of species of exotic birds that are listed in an Appendix to CITES and that are not subject to a prohibition or suspension of importation otherwise applicable under the WBCA. For non-captive-bred birds to be imported from other countries and therefore, for such birds to be listed in an approved list, the Service is required by the WBCA to ''use the best scientific information available, and to consider the adequacy of regulatory and enforcement mechanisms in all countries of origin for the species, including such mechanisms for control of illegal trade.''

The WBCA requires the Service to make the finding that CITES is being effectively implemented, by making each of the following findings specified in Section 106, paragraph (c) of the WBCA:

(1) That the country of origin has established a Scientific Authority or other equivalent authority;

(2) That the requirements of Article IV of the Convention are implemented with respect to that species;

(3) That remedial measures recommended by the Parties to the Convention with respect to that species are implemented;

(4) That a scientifically-based management plan has been developed for the species which provides for the conservation of the species and its habitat and includes incentives for conservation (section 106, paragraph (c)(2)(A) of the WBCA);

(5) That a scientifically-based management plan has been developed for the species which ensures that the use of the species is biologically sustainable and maintained throughout the range of the species in the country to which the plan applies at a level that is consistent with the role of the species in the ecosystem and is well above the level at which the species might become threatened with extinction (Section 106, paragraph (c)(2)(B) of the WBCA);

(6) That a scientifically-based management plan has been developed for the species which addresses factors relevant to the conservation of the species, including illegal trade, domestic trade, subsistence use, disease, and habitat loss (section 106, paragraph (c)(2)(C) of the WBCA);

(7) That the management plan is implemented and enforced (Section 106, paragraph (c)(3) of the WBCA); and

(8) That the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health, including inhumane treatment (Section 106, paragraph (c)(4) of the WBCA).

The Service notes that Congress in the WBCA used the terminology ''scientifically-based management plan'' and it has retained this phrase in this final rule. However, the Service recognizes that preferable phrasing is ''science-based'' or ''scientifically-sound'' management plan and notes that this is the objective of a sustainable use management plan under the WBCA. Some animal welfare and conservation organizations recommended that the Service insert the word ''scientific'' throughout the criteria, such as ''scientific study'' or scientific

methodology. The Service is making no changes based on these comments, since this wording is redundant and already incorporated in the phrase ''scientifically-based''.

Numerous comments were received on the criteria which the Service proposed for making the above findings and these comments are addressed in the following sections.

General Comments on the Criteria

The pet industry representative and several avicultural organizations and aviculturists objected to the amount of scientific information required under the proposed regulations because they believe such information is impossible to obtain in developing countries because of scientific, logistical and financial constraints. They oppose the adoption of the proposed criteria because they consider them to be too complex and unattainable for the underdeveloped countries of the world. The Service strongly disagrees. In particular, the Service disagrees that range states that may be interested in exporting wild-caught birds are incapable of developing management plans based on scientific information.

The WBCA requires that the management plans be ''scientifically-based'' and that the imports of wild-caught birds be biologically sustainable and non-detrimental to the survival of the species in the wild. Therefore, the Service is required to receive and review scientific data that will ensure such findings can be made. The Service notes that such scientific studies are currently being undertaken in several developing countries by nationals from these countries. Some examples include the Blue-fronted Amazon (*Amazona aestiva*) sustainable use project in Argentina; the study of three Amazon parrot species in Mexico; the study of the Yellow-crowned Amazon (*Amazona ochrocephala*) and its potential sustainable use in Guatemala; the study of parrot populations in Venezuela; the study of Atlantic coastal forest Amazon parrots in Brazil; the study of macaws and other parrot species in Manu National Park, Peru; the study of psittacine populations in Cuba; and the study of cockatoo species in Indonesia. These studies are not just brief censuses, but often multi-year studies addressing a spectrum of biological questions integral to the development of comprehensive management plans. In addition to the scientific data collected during these projects, these research projects serve an invaluable function in training ecologists and conservation biologists in these countries. The WBCA encourages such studies and the Service is willing to offer technical expertise to those countries requesting assistance. The Service hopes that development agencies, consumers (industry and avicultural groups) and the conservation communities will join efforts with the Service to provide support and expertise to sustainable use projects that address the use of exotic birds.

One animal welfare organization opposed the use of the phrase ''sustainable use'' throughout Section 15.32 and commented that the term ''sustainable use has become a buzzword, conjuring up images of carefully planned and strictly controlled use of wildlife that will not harm wild populations or their ecosystems''. They requested that the term ''scientifically-based'' management plan be substituted for sustainable use management plan. The Service disagrees and will retain the use of this terminology. However, the Service believes that any valid sustainable use management plan must be scientifically-based. The WBCA requires that imports of wild-caught birds be ''biologically sustainable'' and therefore, the management plans submitted must provide information that addresses such use and must be scientifically-based. A management plan based only on commercial interests or market demand would be considered inadequate.

Comments on Specific Requirements for Scientifically-Based Sustainable Use Management Plans

Section 15.32(a)(1) Background Information

One avicultural organization opposed the requirement to provide ''a summary of the country's export legislation related to this species, implementing the Convention, and where appropriate, a summary of implementing regulations; and a summary of the country's enforcement and monitoring mechanisms to ensure compliance with the management plan''. The Service disagrees. Such information is required under the WBCA to evaluate the implementation of CITES in the exporting country and to make the required non-detriment finding that the import of wild-caught birds will not affect the survival of the species throughout its range. The Service requires such information to ensure that wild-caught birds from neighboring range countries are not being laundered through an exporting country's sustainable use management plan. A copy of a country's export legislation would be extremely useful in assisting importing countries as it would help the Service in smuggling interdiction efforts and identification of fraudulent documents.

Some animal welfare organizations requested that a scientific study within the previous three years be required for information on a species' distribution and status. The Service disagrees and does not believe the WBCA mandates such a requirement. The Service recognizes that such information needs to be current and factual, but will allow the exporting country to chose a time frame for the information submitted. The Service is requesting that information on distribution be ''recent''.

One animal welfare organization suggested also requiring the following background information: Summaries, prepared by the Management Authority of each country of origin of the species, addressing the legislation related to this species, implementation and enforcement of CITES. The Service disagrees. Should the Service require such information to evaluate the management plan for a species with a multi-country distribution, the Service can obtain such information directly from the CITES Management Authority for these countries or the CITES Secretariat. It would be an unfair administrative burden for an exporting country to have to submit such summaries.

Section 15.32(a)(2) Habitat Information

The pet industry representative and several avicultural organizations and individuals opposed the requirement for the submission of habitat information, which they consider to be irrelevant and unavailable. The Service strongly disagrees. The WBCA requires ''that a scientifically-based management plan has been developed for the species which provides for the conservation of the species and its habitat and includes incentives for conservation'' (Section 106, paragraph (c)(2)(A) of the WBCA). In order to make this finding, the Service needs information on a species' ecological requirements and habitats. The Service also believes that the exporting country needs this information in order to develop a scientifically-based sustainable use management plans. The approval criteria incorporate this consideration in a number of ways, including requiring: (a) Information on species conservation status and distribution; and (b) habitat conservation information, including habitat requirements, habitat distribution and protection status, and habitat status and trends.

Scientific organizations and one zoo representative supported these requirements for habitat information.

Some animal welfare organizations requested that such information be provided from the results of a scientific study conducted within the previous three years prior to the submission of a sustainable use management plan. The Service disagrees, recognizing that such information needs to be current and factual; the Service will allow the exporting country to choose a time frame for the information submitted, as long as it reflects the current situation.

Some animal welfare organizations recommended an additional requirement that would request habitat information on reserves which provide protection for a species and management/enforcement information on those reserves. The Service recognizes the usefulness of this information in evaluating sustainable use plans, but does not believe that this calls for establishing a separate requirement. Rather, such information can be provided under § 15.32(a)(2)(ii), and the Service recommends its submission when available. The Service notes as well that in any application, any such additional information that demonstrates the scientific basis of a sustainable use management plan should be submitted in order to facilitate decision-making.

Section 15.32(a)(3) Information on the Role of a Species in its Ecosystem

Conservation, scientific, and animal welfare organizations commented that it is not possible for a country of export to ensure that a species is being used in a sustainable manner when that species does not breed in the country of export. Since the breeding cycle is one of the most crucial stages in an organism's annual cycle and the one that provides data to assess reproductive output and population dynamics, it would not be possible to assess the affect of take on the population and evaluate the sustainable use of such a population according to these commenters. They argue that a scientifically-based management plan must address these concerns to be valid. The Service strongly agrees and has modified its criteria accordingly. Unless an exporting country can demonstrate that a management plan is scientifically valid and the export of a non-breeding species from the country is biologically sustainable and not detrimental to the species' survival in its breeding range, the Service will consider only management plans for species which breed in the exporting country. The Service does not believe that a species that breeds elsewhere than the exporting country can be managed sustainably in the absence of reproductive data unless such management is a cooperative submission by both countries. The Service strongly encourages bilateral or multilateral cooperation in the case of such migratory species.

Section 15.32(a)(4) Population Dynamics of the Species

In order to determine that any utilization proposed in the management plan is sustainable, the Service proposed to require evidence of how levels of sustainable use were determined, including either (1) adequate long-term population trends and take levels, or (2) population estimates, reproductive success, and estimation of the number exported from the country during the past 2 years, and estimation of the number of birds removed directly from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes. The information should include the estimated number of birds to be removed from the wild from each area or region of take each year for all purposes, including age-class information for species, and a description of future plans to monitor the species in each area of take and to determine whether the number of birds taken has been sustainable. Throughout this rule, area or region of take refers to the area or region within the country of export where birds will be removed from the wild; the degree of specificity used will depend on the particular situation in the country of export. If the species is abundant throughout its range, the region of take could be the entire country; a species that is locally abundant but rare elsewhere might have a more restricted area of take.

This section generated extensive comments; the criteria listed in this section are essential to evaluate whether the proposed scientifically-based management plan is biologically sustainable. The proposed rule (59 FR 12784, March 17, 1994) required recent population data for the population of the species in the country of export, as well as population data from the population being harvested, derived from indices of relative abundance (such as catch per unit effort or call count surveys) or population estimates (if available), along with documentation for each estimate. These population data or estimates should be based on studies conducted for at least three separate years, or data for one year can be provided, with a description of survey plans for future years. Population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted.

For long-lived, more ''K-selected'' species of birds (as listed in the proposed rule in § 15.32) the Service proposed requiring that the management plan (for species that breed in the country of export) include information on nesting ecology, and reproductive rates or mortality rates. Those ''K-selected'' species were defined as those not in one of 19 specified families of birds. The Service proposed more rigorous standards for the sustainable utilization of ''K-selected'' species, based on an awareness that their sustainable utilization is very difficult, and that they are extremely sensitive to population depletion.

For species included in one of the 19 families of birds specified in the proposed rule in § 15.32 (more ''r-selected'' species), the Service proposed that, instead of detailed demographic information, the management plan (for species that breed in the country of export) need include: An estimation (with documentation) of recent reproductive success; estimation of annual mortality or loss; or documentation of long-term population and offtake trends based on indices of relative abundance and measures of offtake and description of any long-term changes in other mortality factors. Reproductive success may be estimated using pre-breeding and post-breeding counts, wherever that is appropriate. For all birds, when the species occurs in the country of export only during the non-breeding season, the Service proposed to require documentation or a letter from the CITES Scientific Authority that the species does not breed there.

Two biologists supported the proposed regulations. Two scientific organizations who represent the ornithological community, and the animal welfare and conservation organizations opposed aspects of the proposed regulations regarding population dynamics. They considered the proposed regulations to be scientifically flawed. Representatives of the scientific community argued that ''the amount of information needed to prove sustainable use should be sufficient to demonstrate convincingly that the level of extraction is in proportion to the annual growth of the population.'' To determine if levels of use are sustainable, they recommend a minimum of four kinds of biological information: (1) Population size and trends; (2) annual reproductive success (number of young produced) per female by age groups; (3) annual rate of survival of males and females by age groups; (4) the number of birds harvested. They recommend that population trends and

levels of harvest should be measured and reported for each year of harvest. Reproductive and survival rates should be measured for 3 to 5 years, and periodically thereafter. They strongly disagree with the proposed regulations which require information on reproductive rates *or* survivorship rates. They recommend that both be measured for the scientific determination of quotas for sustainable use, and that this should be required for all species in trade, not only for K-selected species.

The scientific community, the zoo representative, and animal welfare and conservation organizations opposed the use of different requirements for ''r- and K-''selected species. They argued that while it is generally true that K-selected species are more sensitive to overharvesting than r-selected species, ''the population dynamics of long-lived, K-selected birds are usually most affected by (or sensitive to) changes in adult mortality rates. In contrast, r-selected species have shorter life spans and require frequent, successful reproduction for populations to be sustained. In other words, population dynamics of r-selected species are often equally influenced by changes in reproductive success and adult mortality. The proposed regulations do not delineate what age classes should be harvested for trade.'' Given that both adults and nestlings are likely to be traded, and the general lack of biological information that exists on species in international trade, the commenters argued that it is essential to require similar information for all species of birds. Lastly, they argued that the r-K dichotomy is of little use when comparing families of birds because within families, there is great variation in life history traits. They support the adoption of one set of standards for all birds, and that such standards should be strict and require information on all the population parameters discussed above as necessary to determine biologically sustainable use.

The pet industry and avicultural organizations opposed the requirements for ''r- and K-''selected species. They argued that the reproductive information called for may not be necessarily relevant to the determination of sustainable use. They support the adoption of one set of standards for all birds, and that such standards be based on indices of relative abundance, and measures of offtake. A general one-time population study for certain species should be acceptable. The Service strongly disagrees and supports the use of population estimates, reproductive rates, survivorship rates, and mortality rates in determining if a sustainable use management plan is biologically valid and non-detrimental to the species' survival. For many long-lived species, indices of abundance provide insufficient information to assess a population's status and determine measures of offtake. For many Amazon, cockatoo and macaw species, population numbers may be stable but without reproductive or mortality information, it is impossible to determine if the population is stable, declining or increasing over a limited time period. In the early 1950's the Puerto Rican Parrot population numbered around 200 birds in the wild but by 1968, it had crashed to less than 50 individuals. Population nesting success was so low that the recruitment rate for the population was zero.

The Service strongly believes that it is critical to require information on population dynamics which would allow the Service to be able to evaluate sustainable use management plans in a rigorous scientific manner. The Service has modified the final rule to require the minimum four types of biological information that the scientific ornithological community has suggested. However, should an exporting country be able to demonstrate that its management plan is scientifically valid without the submission of all the documentation required in § 15.32, the Service would consider such a plan. For example, a scientifically-based management plan for estrildid finches could be considered without documentation on annual reproductive success (number of young produced per female by age groups). The Service also recognizes that the theory of the biologically sustainable use of species is continually evolving and methodologies to measure population dynamics will change and become increasingly refined as theory is put into practice. Therefore, the Service wishes to allow some flexibility in evaluating a scientifically-based management plan.

The Service has reviewed the scientific information available on sustainable use and the biological underpinnings of such theory. The Service notes that the most successful projects currently in place for sustainable use involving international trade in CITES-listed species involve reptiles, particularly some lizards and crocodilians, and as such caution should be utilized in translating such projects to birds, particularly long-lived species such as psittacines. In developing the proposed criteria on which to base approval of sustainable use management plans, the Service drew upon the model for sustainable use of parrot species by Beissinger and Bucher (1992) [Bioscience vol. 42, March 1992: Can parrots be conserved through sustainable harvesting?]. The scientific, animal welfare and conservation communities supported this model in their comments and urged the Service to adopt it. The Service has added an additional criterion to § 15.32(a)(4) to reflect sustainable use management options contained in this model where management operations are used to boost productivity and harvest levels of young are commensurate with such enhancement. In such a case, it is unnecessary to measure adult survival rates, provided there is baseline data upon which to compare population growth rates pre/post enhancement and to determine quotas for the harvesting of young birds.

Section 15.32(a)(5) Determination of Biologically Sustainable Use

The pet industry representative and an avicultural organization argued that the Service failed to ''recognize the ability of countries to provide for alternative managed and sustainable use of pest species''. They argue that the criteria for the determination of biologically sustainable use are excessive and unnecessary for pest species. ''Pest species'' are often subject to management control programs in exporting countries and exports of pest species are often used as a measure to reduce the population levels of these pest species.

Although Congress did not exempt pest species from the Wild Bird Conservation Act, the Service recognizes that some bird species in their country of origin may be pests and could be exceedingly abundant which allows for their sustainable use in high quantities. However, the mere designation of a species as a pest is insufficient to determine if exports are non-detrimental to the species. The Service notes that Congress, in the Committee Report on the WBCA, said that ''the bill does not authorize the Secretary to include a species on the approved list by virtue of the fact that it is designated as a pest in the country of origin. Rather the Committee expects the Secretary to evaluate the management program based on the best scientific information available, and determine whether it effectively provides for the conservation of birds''. These regulations accordingly reflect Congress' intent.

Several animal welfare organizations opposed the estimation of the number exported from a country of origin during the past 2 years. Animal welfare

organizations argued that such information should be provided for 3 years. The Service is making no change based on these comments. The Service believes that 2 years of data are adequate. Of course, more than 2 years of data are welcome. Furthermore, prior to approval, any proposed management plan will be the subject of a notice published in the Federal Register for public comment, at which time any interested organizations or members of the public may comment on the adequacy of data provided.

Some animal welfare organizations requested that the phrase ''under the management plan'' be inserted into § 15.32(a)(5)(ii) for the number of birds removed from the wild. The Service is making no change based on these comments. This phrase would not add anything, and might be confusing. Data on the numbers removed from the wild are necessary whether part of the management plan or due to other causes.

Some animal welfare organizations requested that § 15.32(a)(5)(iii) be modified to include a description of pre-export holding. The Service agrees and has modified this requirement.

Animal welfare, scientific and conservation organizations supported § 15.32(a)(5)(iv).

Several avicultural organizations and individuals opposed § 15.32(a)(5)(v), claiming that it was too broadly written and requires more information than is necessary to determine if CITES is being effectively implemented. The Service disagrees and is requiring this information to evaluate the scientific management plan and make the required non-detriment finding. Based on its experience in enforcement, the Service is concerned about the laundering of wild-caught birds taken from other areas being represented as birds coming from the areas proposed in the sustainable use management plan. The Service will work with exporting countries on means to prevent such laundering.

Several biologists and conservation organizations supported this requirement in its entirety while most animal welfare organizations and several individuals wish to have it strengthened and text inserted which ''ensures that the species is maintained throughout the range of the species in the country to which the plan applies at a level that is consistent with the role of the species in the ecosystem and is well above the level at which the species might become threatened with extinction''. The Service is making no changes based on these comments. These elements are addressed adequately within the definition of sustainable use.

Some animal welfare organizations requested that the wording in § 15.32 (a)(5)(vi) regarding monitoring plans be made clearer to the reader. The Service agrees and has changed its wording.

Some animal welfare organizations and one conservation organization recommended that two additional requirements be added to § 15.32(a)(5) as part of the determination of biologically sustainable use. One requirement would be monitoring of the population during use and how taking will be halted if it is determined that the number of birds taken is not sustainable. The Service disagrees with incorporating such a redundant requirement. Article IV paragraph 3 of the CITES treaty requires the Scientific Authority of the exporting country to monitor its exports, and limit exports when necessary to maintain species throughout their range at a level consistent with their role in their ecosystems and well above a level at which they might become eligible for inclusion in Appendix I. The Service in approving the sustainable use management plan will be evaluating the implementation of CITES by the exporting country, including its implementation of Article IV. The Service also notes that the Secretary may be petitioned at any time under the WBCA to remove a species from the approved list of non-captive bred species should information become available that the number of birds taken is not sustainable.

The other requirement would be ''a description of how the country of export has made Article IV determinations for each CITES listed species it has exported in the past 3 years, including the bird species that is the subject of the management plan under consideration''. While it would be useful to understand the functioning of a country's Scientific Authority, requiring submission of this information would be excessive and burdensome. The Service has not incorporated this recommended change.

Section 15.32(a)(6) Incentives for Conservation

Some animal welfare groups recommended that the wording of this requirement be changed to ''a demonstration of how export of the bird species to the United States will result in a verifiable improvement in the status of the species or its habitat in the country''. The Service is making no changes based on this comment. The Service recognizes that such information could be used to meet the requirement of ''how the sustainable use management plan promotes the value of the species and its habitats''; however, this is not the only way to demonstrate a conservation incentive.

The pet industry representative, an avicultural organization and several aviculturists argued that ''pest species'' which are subject to management control programs in exporting countries need not demonstrate a conservation incentive for the species. For species where the scientifically based management plan provides documentation that such species is a pest in the country of origin, the Service has modified the requirements for a conservation incentive to allow for the consideration of pest species. However, the U.S. Department of Agriculture (USDA) commented that ''APHIS and its customers are very concerned about the careful importing of birds from other countries, particularly those that are already known to cause threats in agriculture, natural resources, facilities, or human health and safety in their countries of origin''. They requested that the Service consider these factors when approving species for importation. The Service agrees that these should be critical factors to consider. The Service is cognizant of the harm that non-indigenous species can do in the United States. However, the Wild Bird Conservation Act does not specifically restrict the import of pest bird species. Any applications involving the importation of pest species or species that are claimed to be pests in their country of origin will be forwarded to USDA for their comments, which will be taken into consideration.

Section 15.32(a)(7) Additional Factors

One zoological organization, 1 scientific organization, and 12 conservation and animal welfare organizations supported the additional requirements in this section. The pet industry representative and the avicultural organizations opposed the factor which asked for a description of the shipping methods and enclosures. The Service is making no changes based on these comments. The Service is required under Section 106(c) of the WBCA to determine that the methods of capture, transport, and maintenance of the species proposed for export in the sustainable use management plan minimize the risk of injury or damage to health, including inhumane treatment. Therefore, the Service is requiring such information, as it is necessary to evaluate the transport and maintenance of the species. The Service believes that exporting countries are capable of complying with U.S. and CITES humane transport standard. The Service's

primary concern in this regard is the humane and healthful transport of birds, in order to minimize or eliminate mortality and morbidity due to preparation for shipment and transport.

An avicultural organization opposed the requirement for a description of any captive-propagation program for the species carried out in the country as not relevant to the sustainable use management plan. The Service agrees that captive propagation has no bearing on sustainable use and has deleted this factor from the final rule.

A scientific organization for ornithology, one conservation organization and some animal welfare organizations requested that the Service add a requirement which would address how the exporting country will prevent the spread of disease from captured birds being held prior to export to wild populations. While the Service is aware that the birds taken for sustainable use may pose a disease risk to wild populations in the country of import and encourages exporting countries to minimize such risks, we are making no changes based on these comments. The Service is unaware of any reliable, documented examples of where captive-held birds have transmitted diseases to wild populations in the exporting country.

Section 15.32(b) Approval Criteria

General Comments on the Approval Criteria

Some animal welfare and conservation organizations recommended that the Service strengthen the wording of the approval criteria to require the Director to ''determine whether or not an exotic bird species should be listed as an approved species for importation from the country of export, under Section 15.33. In making this determination, the Director shall make a finding that all of the approval criteria have been demonstrably satisfied''. The Service disagrees and is making no changes. The Service notes that Congress, in the Committee Report on the WBCA, said that ''the Committee expects the Secretary to evaluate the management program based on the best scientific information available, and determine whether it effectively provides for the conservation of birds. It is the intent of the Committee that the Secretary have wide discretion in reviewing management plans under this section. Clearly management plans for birds that are becoming rare should be much more stringent than those for birds that are very abundant and are subject to population control programs''. For example, a sustainable use management plan for the CITES Appendix II-listed Blue-fronted Amazon (*Amazona aestiva*) which has declined in some parts of its range would be evaluated more stringently than a sustainable use management plan for the CITES Appendix III-listed red-billed waxbill (*Lonchura senegala*) which is abundant and widespread in its range. The approval criteria in Section 15.32(b) give the Director the flexibility and discretion needed to evaluate sustainable use management plans as Congress intended.

The pet industry representative, an avicultural organization and several aviculturists expressed their support for the proposal by the Service ''to give particularly positive consideration to situations wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan (in effect, a preliminary approval)''. They recommended that such approval criteria be built into the regulations themselves. Several animal welfare and conservation organizations opposed such a ''preliminary approval''.

The Service notes that the criteria in Section 15.32 will be used to evaluate the sustainable use management plans submitted by an exporting country but that the Director has flexibility and discretion in approving plans, as Congress intended. The Service is aware that the criteria for approval of sustainable use plans may appear rigorous, and although desirable and scientifically valid, they may be difficult for some exporting countries. The Service will evaluate each sustainable use plan and the information provided within on its own scientific and conservation merit. The Service may give positive consideration to plans wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan, if the country can demonstrate that such conservative capture and export quotas are non-detrimental to the species survival in the wild. There is precedent among CITES Parties to impose such conservative quotas when some scientific data is available and a species' status is known while the firmer scientific database is being developed. While some of the biological information in the sustainable use management plan may be lacking, the plan must address all the other approval criteria requiring the effective implementation of CITES in the exporting country. The Service notes that Congress, in the Committee Report on the WBCA, said that ''the Committee expects the Secretary to consider the extent to which a country's Scientific Authority is technically capable of carrying out the duties described by CITES.'' It directs the Secretary to review whether a country is effectively implementing remedial measures recommended by the Parties to CITES.

One scientific organization commented that the Service should be required to establish an ''advisory board of scientists chosen for their competence in demography'' to review management plans and make recommendations to the Service on the approval of such plans. The Service strongly disagrees. The Service makes non-detriment findings routinely and has the expertise and competency to evaluate sustainable use management plans. The Service shall publish notice in the Federal Register of sustainable use management plan applications. Interested parties, including the scientific community, are invited to submit comments regarding these plans.

A few animal welfare organizations and individuals commented in opposition to the duration of approval of 3 years and requested that the Service approve sustainable use programs for 1 year only. The Service strongly disagrees and is making no changes. Given the amount of data and information required by the Service to evaluate sustainable use management plans, an approval for only 1 year would be excessive and burdensome to an exporting country and would not allow an exporting country to develop long-term sustainable use and conservation management programs. The Service notes that the Secretary may be petitioned at any time under the WBCA to remove a species from the approved list of non-captive bred species should information become available that the number of birds taken is not sustainable.

General Comments Pertaining to Section 15.33: Species Included in the Approved List for Non-Captive-Bred Species

No comments were received on the proposed organization of this subpart. This subpart is established in this rule; actual text will be proposed as sustainable use management plans are received and approved.

Effects of the Rule

The Service has determined that this final rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). See

516 DM [Departmental Manual] 2, Appendix 1 Paragraph 1.10. The regulations are procedural in nature, and the environmental effects, while crafted to carry out the benign purposes of the WBCA, are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. Future regulations and permitting decisions implementing the WBCA may be subject to NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget review under Executive Order 12866. This action is not expected to have significant taking implications for United States citizens, as per Executive Order 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0084, with the expiration date of August 31, 1996.

This collection of information will be achieved through the use of USFWS Application Form 3–200, which will be modified pursuant to 50 CFR 13.12(b), to address the specific requirements of this final rule. This collection information will establish whether or not the applicant can include a given species of exotic bird in the approved list of non-captive-bred species.

The likely respondents to this collection of information will be foreign governments who wish to include a given species of exotic bird in the approved list of non-captive-bred species. This information will be needed by the USFWS to determine whether a given species of exotic bird can be managed in a scientifically based sustainable manner, thus warranting inclusion in the approved list of non-captive-bred species. A species and country of export will be approved for three (3) years, at which time renewal of approval will be considered by the USFWS. The annual burden of reporting and record keeping should be between five (5) and ten (10) hours per response. The estimated number of likely respondents is less than ten (10), yielding a total annual reporting and recordkeeping burden of one hundred (100) hours or less.

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulation Promulgation

Accordingly, 50 CFR part 15 is amended as follows:

PART 15—WILD BIRD CONSERVATION ACT

1. The authority citation for Part 15 continues to read as follows:

Authority: Pub. L. 102–440, 16 U.S.C. 4901–4916.

2. Amend Part 15, subpart A, section 15.3 by adding the following definitions, in alphabetical order:

§ 15.3 Definitions.

* * * * *

Documentation means a description of how scientific information was collected, including the methodologies used; names and institutions of individuals conducting the work; dates and locations of any study; and any published results or reports from the work.

* * * * *

Life cycle means the annual processes involved with breeding, migration, and all other non-breeding activities.

* * * * *

Status means a qualitative measure of the vulnerability to extinction or extirpation of a population at a given time (e.g., endangered, threatened, vulnerable, non-threatened, or insufficiently known).

Sustainable use means the use of a species in a manner and at a level such that populations of the species are maintained at biologically viable levels for the long term and involves a determination of the productive capacity of the species and its ecosystem, in order to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself and perform its role or function in its ecosystem.

Trend means a long-term assessment of any change in the absolute or relative size of a species' population or habitat over time (e.g., increasing, decreasing, at equilibrium, insufficiently known).

* * * * *

3. Section 15.32 is amended by adding text to read as follows:

§ 15.32 Criteria for including species in the approved list for non-captive-bred species.

Upon receipt of a completed sustainable use management plan for a country of export, the Director may approve a species listed in Appendices II or III of the Convention for importation from that country. Such approval shall be granted in accordance with the issuance criteria of this section. All approved species and countries of export will be listed in section 15.33.

(a) Requirements for scientifically-based sustainable use management plans. Sustainable use management plans developed by the country of export should be submitted for species which breed in the country of export. If the species does not breed in the country of export, the Service will consider sustainable use management plans only when the plan is scientifically valid and nesting (breeding) information can be provided from countries in which the species breeds. Sustainable use management plans shall include the following information, and any other information that may be appropriate:

(1) Background information, including the following:

(i) The scientific and common name of the species;

(ii) Letters from the country of export's Management and Scientific Authorities transmitting the management plan of this species;

(iii) A summary of the country of export's legislation related to this species and legislation implementing the Convention, and, where appropriate, a summary of implementing regulations;

(iv) A summary, from the country of export's Management Authority, of the country's infrastructure and law enforcement and monitoring mechanisms designed to ensure both enforcement of and compliance with the requirements of the management plan, and that the number of birds removed from the wild or exported will be consistent with the management plan;

(v) Recent information on the distribution of the species within the country of export, including scientific references and maps, and historical information on distributions, if relevant; and

(vi) The species' status and its current population trend in the country of export, including scientific references and copies of the most recent non-detriment findings made by the exporting country's Scientific Authority.

(2) Habitat information, including:

(i) A general description of habitats used by the species for each portion of the life cycle completed within the country of export;

(ii) Recent information on the size and distribution of these habitats throughout the country of export and in each area or region of take, including scientific references and maps. The approximate location of any reserves that provide protection for this species should be indicated on the accompanying map(s), along with a brief description of how reserves are protected and how that protection is enforced;

(iii) Status and trends of the important habitats used by the species in the country of export as a whole whenever available and within each area or region of take, including scientific references;

(iv) Factors, including management activities, favoring or threatening the species' habitat in the foreseeable future within each area or region of take, and throughout the country of export whenever available, including scientific references; and

(v) A list of management plans that have been or are being planned, developed, or implemented for the species' important habitats, if any.

(3) Information on the role of the species in its ecosystem, including:

(i) A description of the part(s) of the species' life cycle completed within the country of export;

(ii) A description of nest sites and/or plant communities that are most frequently used for placement of nests and, if applicable, nesting habits;

(iii) A general description of the species' diet and where the species forages (aerial feeder, tree canopy, tree trunk, midstory, understory, open water or other), and seasonal changes in foraging habits, including, when available, scientific references; and

(iv) Information on any species or plant community which is dependent on the occurrence of the exotic bird species.

(4) Population dynamics of the species, including:

(i) Recent population data for the population of the species in the country of export, as derived from indices of relative abundance or population estimates, along with documentation for each estimate;

(ii) Within each area or region of take, documentation for recent population data or estimates, conducted for at least 3 separate years or 1 year with a description of survey plans for future years. These population assessments should have been conducted during the same season (breeding or non-breeding) of each year for which documentation is submitted (i.e., be methodologically comparable—both temporally and spatially);

(iii) Within each area or region of take, a scientific assessment (with documentation) of recent reproductive (nesting) success. This assessment should include information on the number of young produced per egg-laying female per year or per nesting pair, or if scientifically appropriate for the species to be exported, estimates on the number of young produced per year from pre-breeding and post-breeding surveys conducted within the same annual cycle;

(iv) Within each area or region of take, estimation (with documentation) of annual mortality or loss including natural mortality and take for subsistence use, export trade, and domestic trade in each area of take; or

(v) When appropriate, information (with documentation) on the number of young which can be taken from the area, as a result of a conservation enhancement program.

(5) Determination of biologically sustainable use:

(i) Estimation of the number exported from the country during the past 2 years, and the number of birds removed from the wild for export, domestic trade, illegal trade, subsistence use, and other purposes (specify) for the country of export during the past 2 years;

(ii) The estimated number of birds that will be removed from the wild from each area of take each year for all purposes (export trade, domestic trade, illegal trade, and subsistence use), including a description of age-classes (nestlings, fledglings, sub-adults, adults, all classes), when applicable;

(iii) For the projected take addressed in the management plan, a description of the removal process, including, but not limited to, locations, time of year, capture methods, means of transport, and pre-export conditioning;

(iv) Documentation of how each projected level of take was determined;

(v) Explanation of infrastructure and law enforcement and monitoring mechanisms that ensure compliance with the methodology in the management plan and that the species will be removed at a level that ensures sustainable use; and

(vi) Description of how species in each area or region of take will be monitored in order to determine whether the number and age classes of birds taken is sustainable.

(6) (i) For species that are considered ''pests'' in the country of origin: documentation that such a species is a pest, including a description of the type of pest,—e.g., agricultural, disease carrier; a description of the damage the pest species causes to its ecosystem; and a description of how the sustainable use management plan controls population levels of the pest species.

(ii) For non-pest species: A description of how the sustainable use management plan promotes the value of the species and its habitats. Incentives for conservation may be generated by environmental education, cooperative efforts or projects, development of cooperative management units, and/or activities involving local communities.

(7) Additional factors:

(i) Description of any existing enhancement activities developed for the species, including, but not limited to, annual banding programs, nest watching/guarding, and nest improvement; and

(ii) Description, including photographs or diagrams, of the shipping methods and enclosures proposed to be used to transport the exotic birds, including but not limited to feeding and care during transport, densities of birds in shipping enclosures, and estimated consignment sizes.

(b) Approval criteria. Upon receiving a sustainable use management plan in accordance with paragraph (a) of this section, the Director will decide whether or not an exotic bird species should be listed as an approved species for importation from the country of export, under section 15.33. In making this decision, the Director shall consider in addition to the general criteria in part 13 of this subchapter, all of the following factors for the species:

(1) Whether the country of export is effectively implementing the Convention, particularly with respect to:

(i) establishment of a functioning Scientific Authority;

(ii) the requirements of Article IV of the Convention;

(iii) remedial measures recommended by the Parties to the Convention with respect to this and similar species, including recommendations of permanent committees of the Convention; and

(iv) Article VIII of the Convention, including but not limited to establishment of legislation and infrastructure necessary to enforce the Convention, and submission of annual reports to the Convention's Secretariat;

(2) Whether the country of export has developed a scientifically-based management plan for the species that:

(i) provides for the conservation of the species and its habitat(s);

(ii) includes incentives for conservation unless the species is a documented pest species;

(iii) is adequately implemented and enforced;

(iv) ensures that the use of the species is:

(A) sustainable;

(B) maintained throughout its range at a level that is consistent with the species' role in its ecosystem; and

(C) is well above the level at which the species might become threatened;

(v) addresses illegal trade, domestic trade, subsistence use, disease, and habitat loss; and

(vi) ensures that the methods of capture, transport, and maintenance of the species minimize the risk of injury, damage to health, and inhumane treatment; and

(3) If the species has a multi-national distribution:

(i) Whether populations of the species in other countries in which it occurs will not be detrimentally affected by exports of the species from the country requesting approval;

(ii) Whether factors affecting conservation of the species, including export from other countries, illegal trade, domestic use, or subsistence use are regulated throughout the range of the species so that recruitment and/or breeding stocks of the species will not be detrimentally affected by the proposed export;

(iii) Whether the projected take and export will not detrimentally affect breeding populations; and

(iv) Whether the projected take and export will not detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range.

(4) For purposes of applying the criterion in paragraph (b)(2)(iv) of this section, the Director may give positive consideration to plans wherein very conservative capture and export quotas are implemented prior to being able to obtain all of the biological information necessary for a more large-scale management plan, if the country can demonstrate that such conservative capture and export quotas are non-detrimental to the species survival in the wild under the criterion in paragraph (b)(2)(iv) of this section.

(c) Publication in the Federal Register. The Director shall publish notice in the Federal Register of the availability of each complete sustainable use management plan received under paragraph (a) of this section. Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the proposed approval.

(d) Duration of approval. A species and country of export listed in section 15.33 as approved shall be approved for 3 years, at which time renewal of approval shall be considered by the Service.

4. Section 15.33(b) is revised to read as follows:

§ 15.33 Species included in the approved list.

* * * * *

(b) Non-captive-bred species. The list in this paragraph includes species of non-captive-bred exotic birds and countries for which importation into the United States is not prohibited by section 15.11. The species are grouped taxonomically by order, and may only be imported from the approved country, except as provided under a permit issued pursuant to subpart C of this Part.

Dated: November 7, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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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.

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Oklahoma; comments due by 1-29-96; published 12-12-95

Television broadcasting:

Closed captioning and video description of video programming; availability, cost, and uses; comments due by 1-29-96; published 12-18-95

FEDERAL RESERVE SYSTEM

Truth in lending (Regulation Z):

Official staff commentary; revision; comments due by 2-2-96; published 12-7-95

Truth in Savings (Regulation DD):

Official staff commentary; revision; comments due by 2-2-96; published 12-6-95

FEDERAL TRADE COMMISSION

Trade regulation rules:

Textile wearing apparel and piece goods; care labeling; comments due by 1-31-96; published 11-16-95

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Employee stock ownership plans; comment period extension; comments due by 1-31-96; published 1-3-96

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Astaxanthin; comments due by 1-30-96; published 11-1-95

Food additives:

Menadione nicotinamide bisulfite; comments due by 2-1-96; published 1-2-96

Food for human consumption: