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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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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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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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. 19
Monday, January 29, 1996

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

RIN 0503–AA14

Expiration of the Special Agricultural Worker Program

AGENCY: Office of the Secretary, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule removes the regulations of the United States Department of Agriculture (USDA) relating to special agricultural workers (SAWs) under section 210 of the Immigration and Nationality Act (INA), as added by section 302 of the Immigration Reform and Control Act of 1986 (IRCA). Specifically, this final rule removes the USDA regulations pertaining to the SAW program as the program expired on December 1, 1988.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Al French, USDA, Telephone (202) 720–4737, Internet: alfrench@usda.gov.

SUPPLEMENTARY INFORMATION: The INA was amended by the IRCA (8 U.S.C. 1160) to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. There was concern during consideration of the IRCA that employers in seasonal agricultural services (SAS), who had come to rely on unauthorized aliens to perform field work, would be unable to obtain sufficient legal workers to satisfy their needs.

To address this concern, the IRCA added section 210 to the INA to establish a program that granted temporary resident alien status to SAWs who could demonstrate that they performed SAS for at least 90 man-days during the 12-month period ending May 1, 1986. The definition of SAS is contained in regulations promulgated by the Secretary of Agriculture at 7 CFR Part 1d and defined the fruits, the vegetables, and the other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting would be considered SAS.

As the statutory authority for the SAW program has expired and Congress has given no indication that the program will be reauthorized, USDA believes that it is appropriate to remove the implementing regulations.

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

List of Subjects in 7 CFR Part 1d

Agriculture, Aliens, Immigration, Labor, Migrant workers, Rural labor.

PART 1d—[REMOVED]

Accordingly, under the authority of 8 U.S.C. 1160, Part 1d of title 7, subtitle A, of the Code of Federal Regulations is removed.

Done at Washington, DC, this 19th day of January, 1996.

Keith J. Collins,

Chief Economist.

[FR Doc. 96–1293 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–01–M

7 CFR Part 1e

RIN 0503–AA13

Expiration of the Replenishment Agricultural Worker Program

AGENCY: Office of the Secretary, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule removes the regulations of the United States Department of Agriculture (USDA) relating to additional special agricultural workers known as replenishment agricultural workers (RAWs) under section 210A of the Immigration and Nationality Act (INA), as added by section 303 of the Immigration Reform and Control Act of 1986 (IRCA). Specifically, this final rule removes the USDA regulations pertaining to the RAW program as the program expired at the end of Fiscal Year 1993.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Al French, USDA, Telephone (202) 720–4737, Internet: alfench@usda.gov.

SUPPLEMENTARY INFORMATION: The INA was amended by the IRCA (8 U.S.C. 1161) to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. There was concern during consideration of the IRCA that employers in seasonal agricultural services (SAS), who had come to rely on unauthorized aliens to perform field work, would be unable to obtain sufficient legal workers to satisfy their needs.

To address this concern, the IRCA added section 210 to the INA to establish a program that granted temporary resident alien status to special agricultural workers (SAWs) who could demonstrate that they performed SAS for at least 90 man-days during the 12-month period ending May 1, 1986. The definition of SAS is contained in regulations promulgated by the Secretary of Agriculture at 7 CFR Part 1d. The IRCA specifies that individuals admitted under this provision would not be required to continue working in agriculture, and in fact would be free to seek employment in any occupation or industry.

Because there was also concern that large numbers of SAWs would in fact leave agricultural employment, which would again cause a shortage or workers to perform SAS, the IRCA added section 210A to the INA, which provides a system for admitting additional RAWs. The number of RAWs who were to be admitted in any fiscal year (FY), beginning with FY 1990 and ending with FY 1993, was the smaller of (1) the annual numerical limitation established by formula in section 210A(b) of the INA, or (2) the shortage number determined by the Secretary of Agriculture and the Secretary of Labor (hereinafter ''the Secretaries'') in accordance with the formula in section 210A(a) of the INA. On January 2, 1990, USDA published in the Federal Register at 55 FR 106 a final rule that set forth the procedure to be used by the Secretaries in determining the shortage number and the annual numerical limitation. The criteria under which individuals may qualify for RAW status was established by the Immigration and

Naturalization Service (INS) in regulations located at 8 CFR Part 210a.

In each of the three years during the RAW program was authorized, the Secretaries found the shortage number to be zero and no alien workers were granted benefits under the program.

As the statutory authority for the RAW program ha expired and Congress has given no indication that the program will be reauthorized, USDA believes that it is appropriate to remove the implementing regulations.

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

List of Subjects in 7 CFR Part 1e

Agriculture, Aliens, Immigration, Labor, Migrant workers, Rural labor.

PART 1e—[REMOVED]

Accordingly, under the authority of 8 U.S.C. 1161, Part 1e of title 7, subtitle A, of the Code of Federal Regulations is removed.

Done at Washington, DC, this 19th day of January, 1996.

Keith J. Collins,

Chief Economist.

[FR Doc. 96–1294 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 94–074–2]

RIN 0579–AA68

User Fees—Commercial Aircraft and Vessels; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations by lowering the fees charged for certain agricultural quarantine and inspection services we provide in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. We are also amending the user fee regulations by raising the fees charged for export certification of plants and plant products. We have determined, based on a review of our user fees, that the fees must be adjusted to reflect the actual cost of providing these services. In addition, we are amending the user fee regulations to clarify the exemption for certain vessels which sail only between the United States and Canada.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Don Thompson, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road, Unit 136, Riverdale, MD 20737–1236, (301) 734–8295.

For information concerning rate development, contact Ms. Donna Ford, PPQ User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road, Unit 54, Riverdale, MD 20737–1232, (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the ''regulations'') contain provisions for the collection of user fees for certain international services provided by the Animal and Plant Health Inspection Service (APHIS). Among the services covered by these user fees are: (1) Servicing international commercial aircraft and vessels arriving at ports in the customs territory of the United States; and (2) certifying plants and plant products for export.

On May 24, 1995, we published a document in the Federal Register (60 FR 27437–27441, Docket 94–074–1) proposing various changes to these regulations.

We solicited comments concerning our proposal for 30 days ending June 23, 1995. We received 45 comments by that date from trade associations connected with the air travel industry, trade associations representing various sectors of the lumber industry, producers in the lumber, flower, and other plant or plant-related industries, members of Congress, and private individuals. The comments are discussed below by topic.

International Commercial Aircraft

We proposed to amend the user fee for agricultural quarantine and inspection (AQI) services provided by APHIS in connection with the arrival of an international commercial aircraft at a port in the customs territory of the United States. (The customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.) the current user fee for services for international commercial aircraft is $61. We proposed to lower this user fee from $61 to $53 for each arrival. We determined the proposed fee based on a review of user fees collected in FY 1993 and FY 1994 and a projection of our cost and revenue for FY 1995. As stated in our proposal, the lower fee is necessary to avoid collecting more revenue than needed to cover the costs of the services we provide.

Only three comments directly addressed the proposed fee reduction. One commenter expressed no ''specific objection'' to lowering the fee, but ''[took] exception to * * * lowering the fee charged * * * while overlooking the inadequate passenger inspection staffing levels.'' A second commenter stated that ''it is almost impossible to reconcile this proposed reduction with the current levels of service provided by APHIS * * *''. The third commenter expressed displeasure with our collecting user fees both from air passengers and from airlines, and suggested that the passenger fee alone should be adequate to cover all costs.

We are not making any changes based on these comments. The inspection service provided to airline passengers is different than the inspection service provided for aircraft. We therefore charge separate user fees for these services. Aircraft user fees are paid by the airlines, passenger user fees are paid by the individual passengers, and the amount of each fee is based on the cost of providing each service.

All government agencies are currently under mandate to reduce staff year ceilings, i.e. the number of employees. We have no plans to reduce the staff year ceilings in the AQI program and we are considering ways to increase such staff year ceilings. However, we would have to review any increases carefully to ensure sufficient staffing in other APHIS and U.S. Department of Agriculture programs.

One commenter stated that the commercial aircraft inspection fee is ''contrary to and inconsistent with the international obligations of the United States, and thus must be withdrawn.'' The comment suggested that this APHIS user fee violates the Convention on International Civil Aviation (''Chicago Convention'') and certain specified bilateral air transport service agreements and treaties, such as the U.S. Air Transport Agreement with Italy. The comment stated that this issue has been raised in previous rulemakings on APHIS user fees.

Although we have never previously specifically addressed the U.S. Air Transport Agreement with Italy, we believe our previous discussions of these issues are also pertinent to this agreement. Its language is similar, if not identical, to the many bilateral Air Transport Services Agreements to which the United States is a party, and which we have addressed in previous Federal Register documents.

On April 12, 1991, we discussed this subject in a final rule published in the Federal Register (56 FR 14837–14846, Docket No. 91–028; see pages 14840 and 14841), and concluded that APHIS complied with the General Agreement on Tariffs and Trade (GATT), the Caribbean Basin Economic Recovery Act, the U.S. Air Transport Agreement with Austria, the U.S.-Jamaican Bilateral Aviation Agreement of 1969, and that the International Civil Aviation Convention (ICAO) does not apply to APHIS.

Again, on January 9, 1992, in a final rule published in the Federal Register (57 FR 755–773, Docket No. 91–135, see pp. 762–763), we responded to the same or similar concerns. At that time, we addressed: (1) The Chicago Convention; (2) bilateral air transport agreements with Switzerland and the United Kingdom; (3) the United States-Japan Treaty of Friendship, Commerce and Navigation; (4) GATT; and (5) ICAO. We continue to believe that the Chicago Convention and ICOA are inapplicable to APHIS and that the user fees are in compliance with the bilateral air transport agreements as well as the United States-Japan Treaty of Friendship, Commerce and Navigation, and GATT.

International Commercial Vessels

The May 24, 1995 proposal also sought to clarify the exemption from user fees for any vessel which sails only between United States and Canadian ports. To aid the identification of vessels eligible for this exemption, we proposed to require the Masters of such vessels to state in their General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

None of the comments specifically addressed the proposal to clarify this exemption. One commenter, however, stated that the exemption is inequitable and should be abolished because it allows these ships to be inspected without payment of any user fees, and the result is that those who pay user fees for other APHIS services subsidize vessel inspections.

These vessels were originally exempt from paying the user fee because they pose little animal or plant disease or pest risk to United States agriculture, and APHIS does not provide agricultural quarantine inspection services for them (see 56 FR 8150). There has been no change in the animal or plant risk posed by these vessels and we still do not provide inspection services to them. Therefore, we are not making any change in our proposal based on this comment.

Phytosanitary Certificates

The May 24, 1995, proposed rule also proposed to raise user fees for certifying plants and plant products for export. APHIS inspectors and designated State employees issue phytosanitary certificates in accordance with the International Plant Protection Convention and regulations in 7 CFR part 353, certifying that agricultural products being exported from the United States are free from injurious insects and diseases.

Virtually all of the comments we received addressed these user fees. With one exception, the commenters were opposed to any fee increase. The comments raised the following issues:

1. Economic Impact/Benefit to User

Many commenters stated that the fees are unfair or too high, and raise the cost of doing business because they cannot be passed on. Some commenters were particularly concerned that small businesses will be harmed by the proposed increases in user fees.

APHIS sympathizes with these commenters and has attempted to minimize the cost of the services, thereby keeping the user fees at the lowest possible level for all users. Also, APHIS previously established a user fee category for low value commercial shipments in an attempt to minimize the impact on small businesses.

However, when Congress authorized APHIS to prescribe and collect user fees to recover the costs of inspecting plants and plant products for export, it specifically reduced APHIS' appropriation by the estimated amount of providing such services. Currently, APHIS is not appropriated funds to cover the cost of providing these services. Therefore, APHIS must charge user fees which recover the full cost of providing the service. For this reason, APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees which recover less than the full cost of providing the service.

Another commenter stated that there is no benefit to the user that ''caused'' the fee increase. We believe the commenter's intended meaning was that there is no benefit to the user which justifies the fee increase.

We disagree. The proposed user fees are designed to recover the cost of providing phytosanitary certificates. These certificates are not required by APHIS or any other agency of the Federal Government. They are required by foreign countries importing the plant or plant products and are provided to the exporters solely for their benefit. The exporters could not import their plant and plant products into most foreign countries without such a certificate.

2. Eliminate Phytosanitary Certificate Requirements

Several commenters suggested that phytosanitary certificates should not or need not be required for certain products. As discussed above, phytosanitary certificates are required by the country importing the plant or plant product; they are not required by APHIS, the U.S. Department of Agriculture, or any other agency or organization within the Federal Government. Therefore, we are unable to eliminate certificate requirements. However, on August 16, 1995, we published a proposal in the Federal Register (60 FR 42472–42479, Docket No. 90–117–1, see p. 72474) to allow, under an agreement with the European Union, approved producers in the United States to complete their own certificates for kiln-dried lumber and other plant products. The certificate requirement would not be eliminated, but obtaining a certificate would be much simpler and less time consuming for the recipient. We will continue to work with other countries for improvements such as these.

3. Relationship of User Fee to Time Spent Providing Service

Several comments suggested that we adjust our user fees to take into account how long it takes to provide the service or whether we conduct an on-site inspection.

After carefully considering this comment we have determined not to make any changes in the proposed regulation. The time spent by APHIS employees is only part of the cost that we must recover through user fees. Supplies, overhead, equipment, telephone, and numerous support costs must be included. A service may be provided faster in one instance than another; however, our proposed user fees reflect the average cost of providing particular services on a nationwide basis. To adjust the fee on the basis of the time it takes to provide the service would increase the cost of the fees by the additional time and expense involved in customizing the fee for each individual inspection and issuance of a phytosanitary certificate. We believe such a system would be expensive to administer and the additional expenses of such a system would, in turn, have to be included in the fee, raising it further.

4. Competitiveness

Many comments stated that our proposed user fees would make it difficult or impossible for U.S. products to compete in the international marketplace, especially as some foreign countries, including Canada, do not charge for phytosanitary certificates. Some comments also stated that our proposed user fees are anti-competitive because some countries do not require certificates from exporters in certain other countries. Comments also stated that our proposed user fees contradict efforts to increase U.S. exports and will inhibit exports.

We have carefully considered these comments, but are not making any changes based on them. Although some countries do not currently charge for issuing phytosanitary certificates, user fees for this service are being adopted by more and more countries. In fact, as of May 17, 1995, Canada charges a user fee for all export phytosanitary certificates (see May 17, 1995, Canada Gazette Part II, Vol. 129, No. 10, SOR/DORS/95–218). Other countries, including New Zealand, France, Australia, Belgium and The Netherlands, also charge user fees for export phytosanitary certificates. U.S. exporters are therefore not at a competitive disadvantage compared with exporters in other countries.

To the best of our knowledge, there are no countries which do not require phytosanitary certificates. However, some countries do not enforce their requirements in all cases. Also, some countries have negotiated with individual trading partners and agreed to adjust certain specific requirements, such as, for example, who fills out the form and who conducts the inspection, to make certificates easier or cheaper to obtain. For example, as mentioned elsewhere in this document, we proposed to allow, under an agreement with the European Union, approved producers in the United States to complete their own certificates for kiln-dried lumber and certain other plant products. Because APHIS inspectors would not inspect each export shipment, costs would be reduced for both APHIS and the exporter. In this situation the certificate requirement would not be eliminated, but obtaining a certificate would be simpler and less time consuming.

5. APHIS Costs and Procedures

Several comments suggested that APHIS should keep its costs as low as possible, to keep user fees as low as possible. Other comments, many of which made specific suggestions, stated that APHIS should improve its service. The suggestions included changes in procedures and paperwork.

We are always trying to reduce our costs and operate as efficiently as possible to maintain APHIS user fees at the lowest possible level. All of the suggestions made by commenters will be carefully considered. If we determine that changes in procedures and paperwork requirements are practical and desirable, we will publish proposed changes for public comment in the Federal Register.

6. Effective Date

One comment suggested that we delay the effective date of any final rule until January 1996. We understand the commenter's desire to make business plans and not have business already settled affected by increases in our user fees. This rule will not take effect until 30 days after the date it is published in the Federal Register. This delay should give the commenter and others time to prepare.

7. Calculations

One comment objected that a disproportionate share of APHIS costs is allocated to agricultural exports. The comment appears to say that APHIS is recovering 21 percent of the total cost for our agricultural quarantine and inspection (AQI) program through user fees for phytosanitary certificates. The comment also compares aircraft user fees with phytosanitary certificate fees and states that each aircraft fee covers up to 300 individual passenger inspections.

Neither of these statements is correct. User fees for phytosanitary certificates recover only that portion of the total costs of the AQI program attributable to phytosanitary certificate issuance. Phytosanitary certificates actually account for less than 5 percent of total AQI program costs. More than 95 percent of total AQI program costs is recovered through other user fees or through appropriated funds. Among the other user fees is a fee for international commercial aircraft. The user fee for international commercial aircraft recovers only the portion of total AQI program costs attributable to international commercial aircraft inspections. It does not cover inspection of aircraft passengers. Passengers on international commercial aircraft pay a separate user fee for inspection services. This user fee recovers only that portion of total AQI program costs attributable to international commercial aircraft passenger inspections. Therefore, we are making no changes based on these comments.

8. State-Issued Phytosanitary Certificates

A couple of comments addressed the fact that phytosanitary certificates are issued by some States, and those State-issued certificates often cost less than federally-issued certificates. The commenters were concerned that APHIS is ''losing business'' to States. The commenters were also concerned that recipients of State-issued certificates are not paying any fee to APHIS, although the certificates themselves are provided by APHIS, which must also maintain files, track certificates, and otherwise manage the program.

APHIS provides a service to the public and is not ''in business'' as such. Because APHIS seeks to provide efficient and economical service, designated State officials are permitted to issue phytosanitary certificates. Users have the option of obtaining a phytosanitary certificate from a designated State official, which is often more convenient, and saves substantial time and transportation costs.

The commenters are correct that APHIS provides certificates to States and provides oversight of State programs. Although we have decided not to make any changes in the proposed regulations at this time, we will analyze the issue to determine if further adjustments in the user fees are warranted. If we determine that changes are desirable, we will publish proposed changes for comment in the Federal Register.

9. New Fee

One comment suggested that we establish a new category of user fee for issuing phytosanitary certificates for the reexport of noncommercial shipments. We are not aware of the need for such an additional category of user fee at this time. However, we will keep this suggestion in mind as we continue to review the user fee program. If we determine that there is a demand for this type of certificate, we will publish a proposed fee for public comment in the Federal Register.

10. Miscellaneous

One commenter asked who pays for other services. We have user fees for other services, where appropriate, and the users of those services pay for them. We do not have user fees for domestic programs. User fees apply only to import and export services.

The same commenter asked why we ''encourage foreign airlines.'' This comment was apparently prompted by our proposal to lower the user fee for international commercial aircraft. This

user fee applies to all commercial aircraft arriving in the customs territory of the United States. Ownership of the aircraft—foreign or domestic—is irrelevant. The user fee is designed to recover the cost of inspection services provided to each aircraft. The fact that we proposed to lower the user fee only reflects the fact that the costs of providing this service were lower than anticipated.

Another commenter stated that there is a double charge for State certificates which are then endorsed by APHIS. We believe the commenter has misunderstood the system for issuing Federal phytosanitary certificates. Federal phytosanitary certificates are issued only by APHIS officials or, in some States which cooperate with APHIS, by designated State officials. Users pay only one fee for a Federal phytosanitary certificate, although the certificate may be obtained from a State or APHIS official.

Some States require a State phytosanitary certificate before allowing plants or plant products to be moved into their territory from other parts of the United States. State phytosanitary certificates are generally not valid for exports to another country.[1] If a shipper obtains, and pays for, a State phytosanitary certificate to ship a commodity interstate, and the shipper then decides to export the plant or plant products instead, then the shipper must obtain a Federal certificate either from the State, if it issues Federal phytosanitary certificates, or from APHIS. If the shipper obtains a certificate from APHIS, the user fee due for APHIS' certification is not a double charge: The Federal phytosanitary certificate is a separate document issued for a different purpose.

There are two ways to obtain a federally-issued phytosanitary certificate for plants regulated under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The exporter has a choice—he or she can either obtain a State phytosanitary certificate and forward it to certain designated APHIS offices, which will issue a Federal phytosanitary certificate to the exporter by mail; or the exporter can bring the plants to the nearest designated APHIS office and APHIS personnel will issue the Federal phytosanitary certificate directly to the exporter. Which method to use is up to the exporter. If the exporter chooses to obtain a State phytosanitary certificate and forward it to APHIS, there will be two fees—one for the State phytosanitary certificate and one for the Federal phytosanitary certificate. However, the exporter would save the cost of transporting the plants to the designated APHIS office.

One commenter stated that he could not figure out in advance what the user fee would be for a phytosanitary certificate and did not understand how to obtain a refund of overpayments. This situation only results when a prospective exporter buys a block of phytosanitary certificates from APHIS, paying a fixed amount per certificate. Because the user fee varies for different types of certificates, the actual user fee due for a particular phytosanitary certificate is not known until the certificate is complete. For example, the user fee due for a low value commercial shipment may be less than the user fee already paid for the certificate. Under these circumstances, the user is entitled to a refund from APHIS. We have an established refund system. The user should contact the APHIS office where the block of certificates was purchased to arrange for a refund.

One commenter also stated that APHIS no longer issues phytosanitary certificates for as many different plant and plant products as the agency once did. This is correct. Because importing countries have stopped requiring phytosanitary certificates for some plants and plant products, APHIS has stopped issuing phytosanitary certificates for these plants and plant products.

11. Regulatory Impact Analysis

One comment stated that we have not conducted an economic analysis of the proposed phytosanitary certificate fees. This is incorrect. Our analysis was included in the proposed regulations at 60 FR 27439–27440. An updated analysis, using the most current data available at the time this was written, is a part of this document.

One comment stated that if we raise the user fees for phytosanitary certificates, the number of certificates APHIS issues will decline. The commenter may be correct. However, we do not have data to show how much of a decline might occur. Regardless, we are required to recover the cost of providing the service. Therefore, it is necessary to increase our fees for issuing phytosanitary certificates.

Another comment questioned our statement that $3 billion in exports was certified during 1993, and suggested it should be much higher. We have rechecked all of our figures and find that the commenter is correct. In fact, approximately $39 billion in agricultural exports was certified in 1993. Our original figure included only fruits and vegetables; major exports such as lumber and wood products and grain and cereals were not included. We have revised our Regulatory Flexibility Act analysis to reflect the correct figure.

Four comments disagreed with our conclusion that the proposed fees would not have a significant economic impact on a substantial number of small entities. One stated that we should compare the total user fees paid by the affected industry with the profit generated by that industry, rather than comparing user fee costs with overall value of exports. Another stated that our analysis was valid only as to large wholesale agriculture shipments.

We have carefully reviewed our analysis. Based on the data available to us, we continue to believe the proposed fees will not have a significant economic impact on a substantial number of small entities. We would have compared the amount of proposed user fees with business profits if this were possible. However, information on profits from sales is proprietary for many small entities and not part of the public record. In order to minimize any potential impact from increased user fees, small exporters could work through brokers to combine shipments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule will increase the user fees for phytosanitary certificates to recover the cost to APHIS of providing export certification services for plants and plant products. This rule will also reduce the user fee for international commercial aircraft to correspond with the cost to APHIS of providing services. Amendments to user fees are necessary to adjust for changes in service volume and service costs.

Federal phytosanitary certificates must be issued by APHIS or, as explained earlier, by designated State employees in States that cooperate with APHIS, to be accepted in international commerce. Federal phytosanitary certificates must accompany the majority of agricultural commodities (except livestock products) traded. Traded commodities generally include

[1] For certain products from certain States, some countries may accept a State phytosanitary certificate.

cereals and grains (such as soybeans, wheat, and corn), fruits and vegetables, other nursery and horticultural products, and lumber and wood products. In 1993, the value of exported agricultural products requiring phytosanitary certificates was estimated at $39 billion.

Current user fees for phytosanitary certificates do not fully recover APHIS' costs for services performed. In fiscal year 1994, the total cost of providing phytosanitary certificate services was $4,314,000, while total fee collections amounted only to $3,015,000 when the fees were $30 for commercial certificates and $19 for noncommercial certificates. The reason for the discrepancy is that we overestimated the number of certificates and underestimated the time to issue a certificate, thereby underestimating the cost of issuing each certificate. The total program cost for the 1995 fiscal year, which we should have recovered through user fees, was estimated at $4,707,000. This amount includes costs associated with the direct charges for program delivery and associated allocations for program direction and support, agency support, departmental charges, and Office of the General Counsel services. If the proposed fee increases are adopted, estimated collections would rise to $4,717,947 annually.

Exporters of agricultural commodities will be affected by this rule. The Regulatory Flexibility Act requires APHIS to address the economic impact of imposing user fees on ''small'' entities. The Small Business Administration (SBA) criteria for a small wholesale business engaged in the trading of fresh fruits and vegetables is that the business have 100 or fewer employees. SBA criteria for a small crop production business is that it have annual revenues up to $500,000.

Approximately 98,387 federally-issued phytosanitary certificates were issued in 1994. Certificates for commercial shipments are issued to wholesale businesses engaged in the trading of cereals and grains, fresh fruits and vegetables, other nursery and horticultural products, and lumber and wood products. Certificates are also issued to export brokers who handle shipments of produce from various sources. The proportion of exporters in this group which may qualify as small is unknown. It is likely that a large number of these brokers employ fewer than 100 workers.

The value of an average commercial shipment greatly exceeds the increase in the $30 user fee up to the $50 user fee. The total value of agricultural products requiring phytosanitary certificates exported in 1993, estimated at $39 billion, is sufficiently large to incorporate the 0.012 percent ($4.7 million) in total user fee collection; consequently, the impact on U.S. producers and exporters is expected to be very small.

Phytosanitary certificates for noncommercial exporters are generally issued to individuals and to exporters of low value commodities. The user fee for this category of phytosanitary certificate will increase from $19 to $23, an increase of 21 percent. Although user fees represent a proportionately larger share of the total value of noncommercial and low value exports, these small exports may possess a much higher value in the foreign country than in the United States. Moreover, exports by individuals may be gift items with nonmonetary values offsetting some of the effect of the fee increase.

SBA criteria for a small airline is that it have 1,500 or fewer employees. Data from the 1988 Census indicates that there were 67 domestic and international airline operators employing a total of 481,000 employees. Although the size distribution of air carriers that enter the customs territory of the United States is unknown, the effect of the proposed user fee change, regardless of carrier size, is positive—we are proposing a 13 percent user fee reduction, from $61 to $53 per aircraft. The lower fee is sufficient to recover the full cost of providing aircraft inspection services, without collecting more revenue than needed to recover costs. The estimated cost to provide inspection services for international commercial aircraft in FY 1995 is $18 million. At the proposed user fee of $53 per aircraft and a projected FY 1995 commercial aircraft volume of 346,204, total collections would amount to $18.3 million.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 1515–0062.

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

§ 354.3 [Amended]

2. Section 354.3 is amended as follows:

a. By revising paragraph (b)(2)(vi) to read as set forth below.

b. In paragraph (e)(1), the last sentence, by removing ''$61.00'' and adding ''$53'' in its place.

c. In paragraph (g)(5)(i)(A), by removing ''$30'' and adding ''$50'' in its place.

d. In paragraph (g)(5)(i)(B), by removing ''$19'' and adding ''$23'' in its place.

e. In paragraph (g)(5)(ii), by removing ''$19'' and adding ''$23'' in its place.

f. In paragraph (g)(5)(iii)(A), by removing ''$30'' and adding ''$50'' in its place.

g. In paragraph (g)(5)(iii)(B), by removing ''$19'' and adding ''$23'' in its place.

h. In paragraph (g)(5)(iv), by removing ''$30'' and adding ''$50'' in its place.

i. In paragraph (g)(5)(v), by removing ''$6'' and adding ''$7'' in its place.

j. In paragraph (h)(2), by removing ''$6'' and adding ''$7'' in its place.

k. By adding at the end of the section the following: ''(Approved by the Office of Management and Budget under control numbers 1515–0062, 0579–0094, or 0579–0052)''.

§ 354.3 User fees for certain international services.

* * * * *

(b) * * *

(2) * * *

(vi) Any vessel which sails only between United States and Canadian ports, when the Master of such vessel arriving from Canada certifies, in the ''Remarks'' block of the General Declaration, Customs Form 1301, that the vessel has sailed solely between the United States and Canada for the previous 2 years.

* * * * *

(Approved by the Office of Management and Budget under control numbers 1515–0062, 0579–0094, or 0579–0052)

Done in Washington, DC, this 24th day of January 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–1506 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV95–982–2IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1995–96 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced filberts/hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: Effective January 29, 1996. Comments which are received by February 28, 1996 will be considered prior to any finalization of the interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., Room 369, Portland, OR 97204; telephone (503) 326–2725 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This 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 rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended that this action apply to all merchantable filberts/hazelnuts handled during the 1995–96 marketing year. This 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 the date of the entry of the ruling.

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

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

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this interim final rule are based on requirements specified in the order. This rule establishes the amount of inshell filberts/hazelnuts that may be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the handlers may ship to the domestic market throughout the season, and the percentages release the volume of

filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The inshell trade demand equals the average of the preceding three ''normal'' years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such figure by no more than 25 percent, if market conditions warrant such an increase. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout. Desirable carryout is used for early season shipments until the new crop is available for market.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut supply subject to regulation which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1995–96 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 1995, meeting, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage was to guard against underestimates of crop size. The preliminary free percentage released 3,478 tons of filberts/hazelnuts from the 1995 supply for domestic inshell use. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim final and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 15, 1995, reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. Interim final percentages were recommended at 12 percent free and 88 percent restricted, and final free and restricted percentages were recommended at 14 percent and 86 percent, respectively. The Board also recommended that the final percentages be effective on June 1, 1996, which is 30 days prior to the end of the season. The interim final percentages make an additional 870 tons of inshell filberts/hazelnuts available for the domestic inshell market. The interim final marketing percentages are based on the industry's final production estimates and release 4,348 tons to the domestic inshell market from the 1995 supply subject to regulation. The final marketing percentages release an additional 637 tons from the 1995 crop for domestic use. Thus, a total of 4,985 tons of inshell filberts/hazelnuts will be available from the 1995 supply subject to regulation for domestic use when the final percentages are established. The National Agricultural Statistics Service (NASS) estimated filbert/hazelnut production at 38,000 tons for the Oregon and Washington area. The Board unanimously voted to accept the NASS estimate.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1995–96 marketing year:

		Tons
Inshell Supply:		
(1) Total production (NASS estimate)	.....	38,000
(2) Less substandard, farm use (disappearance)	.....	2,466
(3) Merchantable production (the Board's adjusted crop estimate)	.....	35,534
(4) Plus undeclared carryin as of July 1, 1995, subject to regulation	.....	11
(5) Supply subject to regulation (Item 3 plus Item 4)	.....	35,545
Inshell Trade Demand:		
(6) Average trade acquisitions of inshell filberts/hazelnuts for three prior years	.....	4,247
(7) Increase to encourage increased sales (15 percent of Item 6)	.....	637
(8) Less declared carryin as of July 1, 1995, not subject to regulation	.....	536
(9) Adjusted Inshell Trade Demand	.....	4,348
(10) 15 percent of the average trade acquisitions of inshell filberts/hazelnuts for three prior years (Item 6)	.....	637
(11) Adjusted Inshell Trade Demand plus 15 percent for carryout (Item 9 plus Item 10)	.....	4,985
Percentages:	Free	Restricted
(12) Interim final percentages 12 88 (Item 9 divided by Item 5) x 100	12	88
(13) Final percentages (Item 11 divided by Item 5) x 100	14	86

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market have available a quantity equal to 110 percent of prior years' shipments in those outlets before secondary market allocations are

approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. At its August 28, 1995, meeting, the Board recommended that an increase of 15 percent (637 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 637 tons for desirable carryout. The total free supply will be the final trade demand of 4,985 tons plus the declared carryin of 536 tons or 5,521 tons. This is 130 percent of prior years' sales and exceeds the goal of the Guidelines.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received in response to this action, will be considered before finalization of this rule.

After consideration of all available information, it is found that the establishment of interim final and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The 1995–96 marketing year began July 1, 1995, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.243 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.243 Free and restricted percentages—1995–96 marketing year.

(a) The interim final free and restricted percentages for merchantable filberts/hazelnuts for the 1995–96 marketing year shall be 12 and 88 percent, respectively.

(b) On June 1, 1996, the final free and restricted percentages for merchantable filberts/hazelnuts for the 1995–96 marketing year shall be 14 and 86 percent, respectively.

Dated: January 22, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–1295 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List, which was last published on October 30, 1995 (60 FR 55183), and became effective November 13, 1995. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no new additions, deletions or changes to the Board's Foreign List, which was last published on October 30, 1995 (60 FR 55183), and which became effective November 13, 1995. The Foreign List includes those foreign equity securities that meet the criteria in section 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a)

and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

ACCESS HEALTHNET, INC.
$.001 par common
ALPHAREL, INC.
Warrants (expire 12–12–95)
BIO-TECHNOLOGY GENERAL CORP.
Warrants (expire 12–19–95)
BIOMEDICAL WASTE SYSTEMS, INC.
$.001 par common
BRENDLE'S INCORPORATED
$1.00 par common
CLIFF'S DRILLING COMPANY
No par convertible exchangeable prefeeerf
COMET SOFTWARE INTERNATIONAL
Ordinary shares (NIS .01)
CPI AEROSTRUCTRUES, INC.
$.001 par common
DEP CORPORATION
$.01 par common
Class A, $.01 par common
DIPLOMAT CORPORATION
Warrants () expire 11–04–98)
ECOSCIENCE CORPORATION
$.01 par common
EFI ELECTRONICS CORPORATION
$.0001 par common
HAMBURGER HAMLET RESTAURANTS, INC.
$.01 par common
HFS INCORPORATED
Warrants (expire 08–10–98)
HUDSON TECHNOLOGIES, INC.
Warrants (expire 11–02–99)
INDENET, INC.
Class B, warrants (expire 08–31–98)
INTERFACE SYSTEMS, INC.
Warrants (expire 12–29–95)
INTERFACE, INC.
8% convertible debentures due 2013
INTERNATIONAL NURSING SERVICE
12% cumulative convertible preferred
INTERNATIONAL TOURIST ENTERTAINMENT CORP.
$.001 par common
LM ERICSSON TELEPHONE COMPANY
Rights
LOUISVILLE GAS & ELECTRIC CO.
7.45% preferred stock
MEDALLIANCE INC.
$.01 par common
MET-COIL SYSTEMS CORPORATION
$.01 par common
MICROS-TO-MAINFRAMES, INC.
Warrants (expire 10–26–97)
MONACO FINANCE, INC.
Class B, warrants (expire 12–11–95)
NDC AUTOMATION, INC.
$.01 par common
ORBIT INTERNATIONAL CORPORATION
$.10 par common
PEASE OIL AND GAS COMPANY
Series A, $.01 par cumulative convertible preferred
PHARMACIA CORPORATION
American Depositary Receipts
PINNACLE BANC GROUP, INC. (IL)
$4.69 par common
PROGRAOUP, INC.
$.50 par common
RAMTRON INTERNATIONAL CORP.
Series C, $.01 par convertible preferred
REN CORPORATION—USA
No par common
REXON, INCORPORATED
No par common
SAYETT GROUP, INC.
$.01 par common
SUNSTATES CORPORATION
$.33⅓ par common
$3.75 par cumulative preferred
WORK RECOVERY, INC.
$.004 par common
ZYNAXIS, INC.
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

AAMES FINANCIAL CORPORATION
$.01 par common
ACX TECHNOLOGIES, INC.
$.01 par common
ADVANCE ROSS CORPORATION
$.10 par common
ADVANTAGE COMPANIES, INC.
No par common
AMERICAN CITY BUSINESS JOURNALS, INC.
$.01 par common
AMERICAN CONSUMER PRODUCTS, INC.
$.10 par common
AMERICAN ELECTRONIC COMPONENTS, INC.
No par common
AMFED FINANCIAL, INC.
$.01 par common
APPLIED IMMUNE SCIENCES, INC.
$.01 par common
ARAMED, INC.
$.01 par callable common
ARAN ENERGY PLC
American Depositary Receipts
BANCTEC, INC. (TX)
$.01 par common
BANK SOUTH CORPORATION (GA)
$5.00 par common
BAY RIDGE BANCORP, INC.
$.10 par common
BIOSAFETY SYSTEMS, INC.
$.01 par common
BOLLE AMERICA, INC.
$.01 par common
BRAINTREE SAVINGS BANK (MA)
$1.00 par common
C C H INC.
Class A, $1.00 par common
Class B, $1.00 par common
CAPITAL BANCORPORATION, INC. (MO)
$.10 par common
Depositary shares
CARELINE, INC.
$.0001 par common
CF BANCORP, INC.
$.01 par common
CHARTER FEDERAL SAVINGS BANK (VA)
$.01 par common
CITIZENS FEDERAL BANK, FSB
Series 1993 A, 8.75% par noncumulative preferred
COLUMBIA FIRST BANK, FSB
$.01 par common
COMDATA HOLDINGS CORPORATION
$.01 par common
CORNERSTONE FINANCIAL CORP.
No par common
CSF HOLDINGS, INC.
$.01 par common
D F & R RESTAURANTS, INC.
$.01 par common
DATA MEASUREMENTS CORPORATION
$.01 par common
DATA SWITCH CORPORATION
$.01 par common
DELRINA CORPORATION
No par common
DELTA AND PINE LAND COMPANY
$.10 par common
DEVRY INC.
$.01 par common
ELCO INDUSTRIES, INC.
$5.00 par common
FAIRFIELD COMMUNITIES, INC.
$.01 par common
FALCON PRODUCTS, INC.
$.02 par common
FAR EAST NATIONAL BANK (CA)
$1.25 par common
FIRST UNITED SAVINGS BANK, FSB (IN)

$.01 par common
FIRSTFED MICHIGAN CORPORATION
$.01 par common
FOUNDERS FINANCIAL CORPORATION (FL)
$1.00 par common
FRAME TECHNOLOGY CORPORATION
No par common
FSB FINANCIAL CORPORATION
$.01 par common
GAMING CORPORATION OF AMERICA
$.02 par common
GARDEN STATE BANCSHARES, INC. (NJ)
No par common
GREAT COUNTRY BANK (CT)
$1.00 par common
GRIFFIN TECHNOLOGY INCORPORATED
$.05 par common
GROWTH FINANCIAL CORP. (NJ)
$1.00 par common
HAWKEYE BANCORPORATION (IA)
No par common
HEART TECHNOLOGY, INC.
$.01 par common
HELIAN HEALTH GROUP, INC.
$.01 par common
HERITAGE FEDERAL BANCSHARES, INC. (TN)
$1.00 par common
HOLLINGER INTERNATIONAL, INC.
Class A, $.01 par common
HORTON, D.R., INC.
$.01 par common
HUFFMAN KOOS, INC.
$.01 par common
HUNGARIAN TELEPHONE & CABLE CORP.
$.001 par common
INSITUFORM MID-AMERICA, INC.
Class A, $.01 par common
INTEGRATED SILICON SOLUTION, INC.
$.001 par common
INTERCONTINENTAL BANK (FL)
$2.00 par common
JOSLYN CORPORATION
$1.25 par common
KBK CAPITAL CORPORATION
$.01 par common
KENTUCKY MEDICAL INSURANCE CO.
Class A, $2.80 par common
LANNET DATA COMMUNICATIONS LTD.
Ordinary shares, NIS .1 par value
LAWYERS TITLE CORPORATION
No par common
LEARNING COMPANY, THE
$.001 par common
LEGENT CORPORATION
$.01 par common
LEXINGTON SAVINGS BANK (MA)
$.30 par common
LILLY INDUSTRIES, INC.
Class A, no par common
LINCOLN SAVINGS BANK (PA)
$1.00 par common
LOYOLA CAPITAL CORPORATION
$.10 par common
MAIN STREET COMMUNITY BANCORP, INC.
$.01 par common
MARBLE FINANCIAL CORPORATION
$1.00 par common
MAXTOR CORPORATION
$.01 par common
MEDICAL MANAGEMENT, INC.
$.001 par common
MEDICINE SHOPPE INTERNATIONAL, INC.
$.01 par common
MEGATEST CORPORATION
$.001 par common
MICHIGAN NATIONAL CORPORATION
$10.00 par common
MIDLANTIC CORPORATION
$3.00 par common
MILLER INDUSTRIES, INC.
$.01 par common
MULTIMEDIA, INC.
$.10 par common
NATIONAL BEVERAGE CORP.
$.01 par common
NETWORTH, INC.
$.01 par common
NEWPARK RESOURCES, INC.
$.01 par common
NEXGEN, INC.
$.0001 par common
NORRELL CORPORATION
No par common
NORWEB PLC
American Depositary Receipts
NU-WEST INDUSTRIES, INC.
$.01 par common
Class A, $100 par preferred
ORION PICTURES CORPORATION
$.25 par common
ORNDA HEALTHCORP
$.01 par common
PIEDMONT MANAGEMENT COMPANY INC.
$.50 par common
PIONEER HI-BRED INTERNATIONAL, INC.
$1.00 par common
PREMIER BANCORP, INC. (LA)
No par common
PRIME RESIDENTIAL, INC.
$.01 par common
RENAL TREATMENT CENTERS, INC.
$.01 par common
RETIREMENT CARE ASSOCIATES, INC.
$.0001 par common
RIO HOTEL AND CASINO, INC.
$.01 par common
ROADWAY SERVICES, INC.
No par common
ROBEC, INC.
$.01 par common
ROGERS CANTEL MOBILE COMMUNICATIONS, INC.
Class B, no par subordinated voting shares
ROPAK CORPORATION
$.01 par common
ROUSE COMPANY, THE
$.01 par common
Series A, convertible preferred stock
RS FINANCIAL CORPORATION
$1.00 par common
RULE INDUSTRIES, INC.
$.01 par common
SCIGENICS, INC.
$.01 par callable common
SCOTTS COMPANY, THE
Class A, $.01 par common
SHELTON BANCORP, THE (CT)
$1.00 par common
SHL SYSTEMHOUSE INC.
No par common
SIMMONS OUTDOOR CORPORATION
$.01 par common
SUNBELT COMPANIES, INC., THE
$.01 par common
SUNRISE BANCORP, INC. (NY)
$.10 par common
SYNTRO CORPORATION
$.01 par common
UNIVAX BIOLOGICS, INC.
$.01 par common
WEST ONE BANCORP (ID)
$1.00 par common
WSB BANCORP, INC. (MO)
$.01 par common
XYLOGICS, INC.
$.10 par common

Additions to the List of Marginable OTC Stocks

A.D.A.M. SOFTWARE, INC.
$.01 par common
AASCHE TRANSPORTATION SERVICES, INC.
Warrants (expire 02–09–2000)
ABACAN RESOURCE CORPORATION
No par common
ACCENT SOFTWARE INTERNATIONAL
Ordinary shares par NIS .01
ACTIVE APPAREL GROUP, INC.
$.002 par common
ADEPT TECHNOLOGY, INC.
No par common
ADVANCED ENERGY INDUSTRIES, INC.
$.001 par common
ADVANCED LIGHTING TECHNOLOGIES, INC.
$.001 par common
ADVENT SOFTWARE, INC.
$.01 par common
AFFILIATED COMMUNITY BANCORP, INC.
$.01 par common
AFFINITY TELEPRODUCTIONS, INC.
$.01 par common
AIR CANADA CORPORATION
Class A, non-voting par common
AJAY SPORTS, INC.
Series C, 10% par cumulative convertible preferred
ALL AMERICAN COMMUNICATIONS, INC.
Class B, non-voting, $.0001 par common
AMBANC HOLDING CO., INC.
$.01 par common
AMERICAN ECO CORPORATION
No par common
AMERIN CORPORATION
$.01 par common
AMISYS MANAGED CARE SYSTEMS, INC.
$.001 par common
AML COMMUNICATIONS, INC.
$.01 par common
AMX CORPORATION
$.01 par common
APPLIED MICROSYSTEMS CORPORATION
$.01 par common
ARBOR SOFTWARE CORPORATION
$.001 par common
AREA BANCSHARES CORPORATION
No par common
ARGYLE TELEVISION, INC.
Class A, $.01 par common
ARIEL CORPORATION
$.001 par common
Warrants (expire 01–25–2000)
ASCENT ENTERTAINMENT GROUP, INC.
$.01 par common
BALLARD POWER SYSTEMS, INC.
No par common
BALLY TOTAL FITNESS HOLDING CORPORATION
$.01 par common
BE SEMICONDUCTOR INDUSTRIES NV
Ordinary shares par NLG 5.00
BENCHMARQ MICROELECTRONICS, INC.
$.001 par common
CALIFORNIA MINING CORPORATION

No par common
CALLON PETROLEUM COMPANY
Series A, $.01 par convertible exchangeable preferred
CAPITAL CORP OF THE WEST
No par common
CARDIOMETRICS, INC.
$.01 par common
CARDIOVASCULAR DIAGNOSTICS, INC.
$.001 par common
CARNEGIE GROUP, INC.
$.01 par common
CASTELLE
No par common
CATALYST INTERNATIONAL, INC.
$.01 par common
CELERITEK, INC.
No par common
CFC INTERNATIONAL, INC.
$.01 par common
CHANTAL PHARMACEUTICAL CORPORATION
$.01 par common
CHARTER FINANCIAL, INC.
$.10 par common
CHARTER POWER SYSTEMS, INCORPORATED
$.01 par common
CHARTWELL RE CORPORATION
$.01 par common
CITRIX SYSTEMS, INC.
$.001 par common
CITYSCAPE FINANCIAL CORPORATION
$.01 par common
CKS GROUP, INC.
$.001 par common
CLARIFY INC.
$.0001 par common
COMPLETE MANAGEMENT, INC.
$.001 par common
COMPUMED, INC.
$.01 par common
COMSTOCK BANK (Nevada)
$.50 par common
CONSOLIDATED DELIVERY & LOGISTICS, INC.
$.01 par common
COOPER & CHYAN TECHNOLOGY, INC.
$.01 par common
CORESTAFF, INC.
$.01 par common
CORTECS INTERNATIONAL LIMITED
American Depositary Receipts
CORVITA CORPORATION
$.001 par common
COUNTRY STAR RESTAURANTS, INC.
$.001 par common
Series A, 6% par cumulative convertible prefered
CRONOS GROUP, THE
$2.00 par common
DATAWORKS CORPORATION
No par common
DIAGNOSTIC HEALTH SERVICES, INC.
No par common
Warrants (expire 06–22–98)
DIEHL GRAPHSOFT, INC.
No par common
EAGLE USA AIRFREIGHT, INC.
$.001 par common
EFFECTIVE MANAGEMENT SYSTEMS, INC.
Warrants (expire 09–06–2005)
ELCOM INTERNATIONAL, INC.
$.01 par common
ELECTROSTAR, INC.
$.01 par common
ELEXSYS INTERNATIONAL, INC.
$1.00 par common
EMCOR GROUP, INC.
$.01 par common
ENTERPRISE SYSTEMS, INC.
$.01 par common
EQUIVISION INC.
No par common
ERGO SCIENCE CORPORATION
$.01 par common
ESTENDED STAY AMERICA, INC.
$.01 par common
ETEC SYSTEMS, INC.
$.01 par common
FIRST CITY FINANCIAL CORPORATION
$.01 par special B preferred
FIRST COMMONWEALTH, INC.
$.001 par common
FIRST FINANCIAL BANCORP, INC. (Florida)
No par common
FIRST SAVINGS BANK OF WASHINGTON BANCORP, INC.
$.01 par common
FLUSHING FINANCIAL CORPORATION
$.01 par common
FOREFRONT GROUP, INC., THE
$.01 par common
FRACTAL DESIGN CORPORATION
$.001 par common
FRENCH FRAGRANCES, INC.
$.01 par common
FUISZ TECHNOLOGIES, LTD.
$.01 par common
GCR HOLDINGS, LIMITED
$.10 par ordinary shares
GELTEX PHARMACEUTICALS, INC.
$.01 par common
GENSIA, INC.
Rights (expire 12–31–96)
GLENDALE FEDERAL BANK, FSB (California)
Warrants (expire 08–21–2000)
GLIATECH INC.
$.01 par common
GT INTERACTIVE SOFTWARE CORPORATION
$.01 par common
GUARANTEE LIFE COMPANIES, INC., THE
$.01 par common
GYNECARE INC.
$.01 par common
HALSTEAD ENERGY CORPORATION
$.001 par common
HART BREWING, INC.
$.01 par common
HELP AT HOME, INC.
$.02 par common
Warrants (expire 12–05–2000)
HENRY SCHEIN, INC.
$.01 par common
HFNC FINANCIAL CORPORATION
$.01 par common
HIGHLAND FEDERAL BANK, F.S.B. (California)
$1.00 par common
HOME CENTERS (DIY) LIMITED
Ordinary Shares par NIS 1.00
HOME HEALTH CORPORATION OF AMERICA, INC.
$.01 par common
IDX SYSTEMS CORPORATION
$.01 par common
IMAGE SENSING SYSTEMS, INC.
$.01 par common
IMPERIAL GINSENG PRODUCTS LIMITED
No par common
IMPERIAL THRIFT AND LOAN ASSOCIAION
No par common
INCYTE PHARMACEUTICALS, INC.
$.001 par common
INSIGNIA SOLUTIONS, PLC
American Depositary Receipts
INTEVAC, INC
No par common
INVESTORS FINANCIAL SERVICES CORPORATION
$.01 par common
IPSWICH SAVINGS BANK (Massachusetts)
$.10 par common
ITALIAN OVEN, INC., THE
$.01 par common
ITEX CORPORATION
$.01 par common
JAVA CENTRALE, INC.
No par common
JERRY'S FAMOUS DELI, INC.
No par common
KENSEY NASH CORPORATION
$.001 par common
LAFAYETTE INDUSTRIES, INC.
$.01 par common
LASALLE RE HOLDINGS, LIMITED
$1.00 par common
LEARMONTH & BURCHETT MANAGEMENT SYSTEMS, INC.
American Depositary Receipts
LEARNING TREE INTERNATIONAL, INC.
$.0001 par common
LERNOUT & HAUSPIE SPEECH PRODUCTS, N.V.
No par common
LEXINGTON GLOBAL ASSET MANAGERS, INC.
$.01 par common
LITTLE FALLS BANCORP, INC.
$.10 par common
LOGANSPORT FINANCIAL CORP.
No par common
LUCOR, INC.
Class A, $.02 par common
LUMISYS INCORPORATED
$.001 par common
M.A.I.D., PLC
American Depositary Receipts
MECON, INC.
$.001 par common
META GROUP, INC.
$.01 par common
META-SOFTWARE, INC.
No par common
METATOOLS, INC.
$.001 par common
MICROFIELD GRAPHICS, INC.
No par common
MID-IOWA FINANCIAL CORP.
$.01 par common
MIDDLEBY CORPORATION, THE
$.01 par common
MOBILE MINI, INC.
$.01 par common
MOLECULAR DEVICES CORPORATION
$.001 par common
MORROW SNOWBOARDS, INC.
No par common
NAPRO BIOTHERAPEUTICS, INC.
$.0075 par common
Warrants (expire 08–01–98)
NATIONAL SURGERY CENTERS, INC.
$.01 par common
NATIONAL WIRELESS HOLDINGS, INC.
$.01 par common
NETWORK APPLIANCE CORPORATION
No par common
NEUROMEDICAL SYSTEMS, INC.

$.0001 par common
NIMBUS CD INTERNATIONAL, INC.
$.01 par common
NOODLE KIDOODLE, INC.
$.10 par common
NOR'WESTER BREWING COMPANY, INC.
No par common
NORTHWEST PIPE COMPANY
$.01 par common
NS & L BANCORP, INC. (Missouri)
$.01 par common
NUCO2, INC.
$.001 par common
OBJECTIVE SYSTEMS INTEGRATORS, INC.
No par common
OLS ASIA HOLDINGS LIMITED
American Depositary Receipts
Redeemable purchase warrants (expire 12–18–98)
ON-GARD SYSTEMS, INC.
$.001 par common
ORPHAN MEDICAL, INC.
$.01 par common
PAN AMERICAN SILVER CORP.
No par common
PAREXEL INTERNATIONAL CORPORATION
$.01 par common
PATHOGENESIS CORPORATION
$.001 par common
PATRIOT BANK CORPORATION
$.01 par common
PEEKSKILL FINANCIAL CORPORATION
$.01 par common
PERCLOSE INC.
$.001 par common
PETE'S BREWING COMPANY
No par common
PHARMACOPEIA, INC.
$.0001 par common
PHARMACYCLICS, INC.
$.0001 par common
PHARMHOUSE CORP.
$.01 par common
PHOTON DYNAMICS, INC.
No par common
PHYSIO-CONTROL INTERNATIONAL CORPORATION
$.01 par common
PIXAR
No par common
PPT VISION, INC.
$.10 par common
QUAD CITY HOLDINGS, INC.
$1.00 par common
QUINTEL ENTERTAINMENT, INC.
$.001 par common
RADISYS CORPORATION
No par common
RAINFOREST CARE, INC.
No par common
RATTLESNAKE HOLDING COMPANY, INC., THE
$.001 par common
RAYTEL MEDICAL CORPORATION
$.01 par common
READICARE, INC.
$.01 par common
REDWOOD TRUST, INC.
Warrants (expire 12–31–97)
REGENT ASSISTED LIVING, INC.
No par common
REPUBLIC SECURITY FINANCIAL CORPORATION (Florida)
Series C, 7% par cumulative convertible preferred
RESOURCE MORTGAGE CAPITAL, INC.
Series B, convertible preferred
RESPONSE ONCOLOGY, INC.
$.01 par common
ROADWAY EXPRESS, INC.
$.01 par common
ROSS TECHNOLOGY, INC.
$.01 par common
RSI SYSTEMS, INC.
$.01 par common
SAGEBRUSH INC.
No par common
SAIPIENS INTERNATIONAL CORPORATION NV
Common shares par NLG 1.00
SANDISK CORPORATION
$.001 par common
SANO CORPORATION
$.01 par common
SAVILLE SYSTEMS, PLC
American Depositary Receipts
SCANVEC COMPANY (1990), LTD.
Ordinary Shares NIS 1.00
SCHLOTZSKY'S INC.
No par common
SCOPUS TECHNOLOGY, INC.
$.001 par common
SECURE COMPUTING CORPORATION
$.01 par common
SEL-LAB MARKETING, INC.
$.01 par common
SHERIDAN HEALTHCARE, INC.
$.01 par common
SILICON STORAGE TECHNOLOGY, INC.
No par common
SIMON TRANSPORTATION SERVICES, INC.
$.01 par common
SMART MODULAR TECHNOLOGIES, INC.
No par common
SMT HEALTH SERVICES, INC.
$.01 par common
Warrants (expire 03–04–97)
SOFTWARE 2000, INC.
$.01 par common
SOURCE MEDIA, INC.
$.001 par common
SPACEHAB INCORPORATED
No par common
SPACETEC IMC CORPORATION
$.01 par common
SQA INC.
$.01 par common
STAR GAS PARTNERS, L.P.
Shares of beneficial interest
STERLING VISION, INC.
$.01 par common
STOLT-NIELSEN S.A.
American Depositary Receipts
SUPERIOR ENERGY SERVICES, INC.
Class B, warrants (expire 12–08–2000)
SYNAPTIC PHARMACEUTICAL CORPORATION
$.01 par common
SYNC RESEARCH, INC.
$.001 par common
TCI COMMUNICATIONS, INC.
Series A, 4¼% par cumulative exchangeable preferred
TECHFORCE CORPORATION
$.01 par common
TECHNOLOGY RESEARCH CORPORATION
$.17 par common
TEE-COMM ELECTRONICS, INC.
Purchase warrants (expire 11–22–96)
TEGAL CORPORATION LTD.
$.01 par common
TEL-COM WIRELESS CABLE TV CORPORATION
$.001 par common
TOLLGRADE COMMUNICATIONS, INC.
$.20 par common
TRANS-INDUSTRIES, INC.
$.10 par common
TRIPLE P, N.V.
NLG .20 par common
ULTRADATA SYSTEMS, INC.
$.01 par common
Class A, warrants (expire 02–01–98)
UNISON HEALTHCARE CORPORATION
$.001 par common
UNITED AIR SPECIALISTS, INC.
No par common
UNITED PETROLEUM CORPORATION
$.01 par common
USCI INC.
$.0001 par common
VACATION BREAK U.S.A., INC.
$.01 par common
VDC CORPORATION, LTD.
$.10 par common
VENTURE SEISMIC, LTD.
No par common
Warrants (expire 11–06–2000)
VIEW TECH, INC.
$.01 par common
Warrants (expire 06–16–98)
VISIO CORPORATION
$.01 par common
VISIONEER, INC.
$.001 par common
VISTA 2000, INC.
$.01 par common
VITRAN CORPORATION, INC.
Class A, voting shares
WEGENER CORPORATION
$.01 par common
WESTELL TECHNOLOGIES, INC.
Class A, $.01 par common
WESTERN COUNTRY CLUBS, INC.
$.01 par common
WESTERN PACIFIC AIRLINES, INC.
$.001 par common
WIRELESS ONE, INC.
$.01 par common
XATA CORPORATION
$.01 par common
YES! ENTERTAINMENT CORPORATION
No par common
ZORAN CORPORATION
$.001 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 23, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–1489 Filed 1–26–96; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 102 and 137

Freedom of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's regulatory directive, the Small

Business Administration (SBA) has completed a page-by-page, line-by-line review of all its regulations. As a result, SBA is clarifying and streamlining its regulations. This final rule reorganizes Part 102, which governs SBA's administration of the Freedom of Information and Privacy Acts, in order to make it clearer and more succinct. It also eliminates Part 137, governing Classified Information, folding those sections which apply to SBA into the revised Part 102. It also allows submitters of business information to identify, at the time of submission, material they consider confidential; establishes a fee appeal procedure; eliminates the Program Official from Privacy Act responsibilities; and makes minor changes in Freedom of Information and Privacy Act fees.

EFFECTIVE DATE: This rule is effective on February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Timothy C. Treanor, Attorney Advisor, Office of General Counsel, at (202) 205–6885.

SUPPLEMENTARY INFORMATION: Part 102 of Chapter I, title 13 of the Code of Federal Regulations sets forth the policies and procedures by which SBA administers the Freedom of Information Act and the Privacy Act of 1974. Part 137 of that Chapter contains SBA regulations governing classified information under Executive Order 12356. On November 24, 1995 SBA published a proposed rule in the Federal Register (60 FR 57970) to reorganize Part 102 and to eliminate Part 137, incorporating those portions of the latter Part which apply to SBA into Part 102. SBA did not receive any comments in response to the proposed rule. Thus, SBA is finalizing the rule with only minor technical changes:

(1) Within §§ 102.6(d) and 102.7, the effective date by which procedures change for submitters of business information has been changed from January 1, 1996 to March 1, 1996, so as to occur after the effective date of the new regulations.

(2) Due to the repeal of Executive Order 12356 and to the provisions of new Executive Order 12968, which require only agencies that generate classified materials to regulate their distribution, SBA has eliminated all direct reference to classified materials in its regulations.

(3) Section 102.13, governing subpoenas, has been changed to clarify that the section applies only to lawsuits or other proceedings to which SBA is not a party, and that the Associate General Counsel for Litigation may not delegate to local counsel authorization for the production of documents or testimony of employees from the Inspector General's Office.

(4) The language of various sections has been streamlined and the numbering of some paragraphs has been reordered to make the overall regulations clearer.

A CONVERSION TABLE FOLLOWS

Existing part 102	New part 102
§ 102.1(a)	§ 102.1.
§ 102.1(b)	Deleted.
§ 102.2	Deleted.
§ 102.3(a)	Deleted.
§ 102.3(b)	Deleted.
§ 102.3(c)	Deleted.
§ 102.3(d)	Deleted.
§ 102.3(e)	Deleted.
§ 102.3(f)	Deleted.
§ 102.3(g)	Deleted.
§ 102.3(h)	Deleted.
§ 102.3(i)	Deleted.
§ 102.3(j)	Deleted.
§ 102.3(k)	Deleted.
§ 102.3(l)	§ 102.10.
§ 102.4(a)	Deleted.
§ 102.4(b)	§ 102.2(a).
§ 102.4(c)	§ 102.2(b).
§ 102.4(d)	Deleted.
§ 102.4(e)(1)	§ 102.3(a).
	§ 102.3(d)
§ 102.4(e)(2)	§ 102.4(c).
§ 102.4(e)(3)	§ 102.5.
§ 102.5(a)	Deleted.
§ 102.5(b)(1)	§ 102.6(a).
§ 102.5(b)(2)	Deleted.
§ 102.5(b)(3)	§ 102.6(b).
§ 102.5(c)	Deleted.
§ 102.5(d)	§ 102.6(a).
	§ 102.6(d).
	§ 102.6(e).
§ 102.5(e)	§ 102.7.
§ 102.5(f)	§ 102.6(d).
	§ 102.6(e).
§ 102.5(g)	§ 102.6(f).
§ 102.5(h)	§ 102.6(g).
§ 102.5(i)(1)	§ 102.6(d).
	§ 102.6(e).
§ 102.5(i)(2)	§ 102.6(c).
§ 102.5(i)(3)	Deleted.
§ 102.5(i)(4)	Deleted.
§ 102.6(a)	Deleted.
§ 102.6(b)	§ 102.9(b).
§ 102.6(c)	§ 102.9(c)(1).
§ 102.6(d)	§ 102.9(a).
§ 102.6(e)(1)	§ 102.9(d).
§ 102.6(e)(2)	§ 102.9(f)(1).
§ 102.6(e)(3)	§ 102.9(e).
§ 102.7(a)(1)	Deleted.
§ 102.7(a)(2)	Deleted.
§ 102.7(a)(3)	Deleted.
§ 102.7(a)(4)	Deleted.
§ 102.7(a)(5)	§ 102.8(d).
§ 102.7(a)(6)	§ 102.8(b)(1).
§ 102.7(a)(7)	§ 102.8(b)(2).
§ 102.7(a)(8)	§ 102.8(b)(4).
§ 102.7(b)(1)	§ 102.8(a)(1).
§ 102.7(b)(2)	§ 102.8(a)(2).
§ 102.7(b)(3)	§ 102.8(a)(3).
§ 102.7(b)(4)	§ 102.8(a)(4).
§ 102.7(b)(5)(i)	§ 102.8(a)(5).
§ 102.7(b)(5)(ii)	§ 102.8(a)(6).
§ 102.7(b)(6)	§ 102.8(b)(uosp).

A CONVERSION TABLE FOLLOWS—Continued

Existing part 102	New part 102
	§ 102.8(c).
	§ 102.8(e).
	§ 102.8(h).
§ 102.7(b)(7)	§ 102.8(g).
§ 102.7(c)(1)	§ 102.8(d).
§ 102.7(c)(2)	§ 102.8(b)(uosp).
	§ 102.8(b) (1–3).
§ 102.7(c)(3)	§ 102.8(b)(uosp).
	§ 102.8(b)(4).
§ 102.7(c)(4)	§ 102.8(c).
§ 102.7(d)(1)	§ 102.8(l)(1).
§ 102.7(d)(2)	§ 102.8(m).
§ 102.7(d)(3)	§ 102.8(n).
§ 102.7(d)(4)(i)	§ 102.8(i).
§ 102.7(d)(4)(ii)	§ 102.8(i).
§ 102.7(d)(4)(iii)	§ 102.3(c).
§ 102.7(d)(5)	Deleted.
§ 102.7(e)	§ 102.8(o).
§ 102.8	§ 102.12.
§ 102.20(a)	§ 102.20(a)(1).
§ 102.20(b)	§ 102.20(a)(2).
§ 102.20(c)	§ 102.20(a)(3).
§ 102.20(d)	§ 102.20(b).
§ 102.20(e)	§ 102.20(c).
§ 102.21(a)	Deleted.
§ 102.21(b)	Deleted.
§ 102.21(c)	§ 102.26.
§ 102.21(d)	Deleted.
§ 102.21(e)	§ 102.24.
§ 102.21(f)	§ 102.25.
§ 102.21(g)	Deleted.
§ 102.21(h)	Deleted.
§ 102.22(a)(1)	§ 102.32(b).
§ 102.22(a)(2)	§ 102.32(c).
§ 102.22(a)(3)	§ 102.32(d).
§ 102.22(a)(4)	§ 102.32(e).
§ 102.22(a)(5)	Deleted.
§ 102.22(a)(6)	Deleted.
§ 102.22(a)(7)	Deleted.
§ 102.22(b)(1)	§ 102.32(a).
§ 102.22(b)(2)	Deleted.
§ 102.22(b)(3)	Deleted.
§ 102.22(b)(4)	Deleted.
§ 102.22(b)(5)	Deleted.
§ 102.22(c)	Deleted.
§ 102.22(d)	§ 102.29.
§ 102.23UOP	§ 102.22(a).
§ 102.23(a)	§ 102.22(b).
§ 102.23(b)	§ 102.22(c).
§ 102.23(c)	§ 102.22(d).
§ 102.23(d)	§ 102.22(e).
§ 102.23(e)	§ 102.22(f).
§ 102.23(f)	§ 102.22(g).
§ 102.23(g)	§ 102.22(h).
§ 102.23(h)	§ 102.22(i).
§ 102.23(i)	§ 102.22(j).
§ 102.23(j)	§ 102.22(k).
§ 102.23(k)	§ 102.22(l).
§ 102.24	§ 102.28.
§ 102.25	Deleted.
§ 102.26(a)	Deleted.
§ 102.26(b)(UOP)	Deleted.
§ 102.26(b)(1)	Deleted.
§ 102.26(b)(2)	Deleted.
§ 102.26(b)(3)	§ 102.60.
§ 102.26(b)(4)	§ 102.47(a).
	§ 102.47(b).
§ 102.26(c)	Deleted.
§ 102.27(a)	§ 102.61(a).
§ 102.27(b)(UOP)	§ 102.61(b).
§ 102.27(b)(1)	§ 102.61(a).

A CONVERSION TABLE FOLLOWS—Continued

Existing part 102	New part 102
§ 102.27(b)(2)	§ 102.61(a).
§ 102.27(b)(3)	§ 102.61(a).
§ 102.27(c)	§ 102.61(a).
§ 102.27(d)	§ 102.61(a).
§ 102.27(e)	§ 102.61(a).
§ 102.27(f)	§ 102.61(a).
§ 102.27(g)	§ 102.61(a).
§ 102.28(a)	§ 102.34(a).
	§ 102.58.
§ 102.28(b)	§ 102.34(b).
§ 102.28(c)	§ 102.34(c).
§ 102.28(d)	§ 102.36(b).
§ 102.28(e)	§ 102.35.
	§ 102.36.
§ 102.29(a)	§ 102.38(c).
§ 102.29(a)	§ 102.39.
§ 102.29(b)	§ 102.41.
§ 102.29(c)	§ 102.40.
§ 102.29(d)	Deleted.
§ 102.30(a)	§ 102.42.
§ 102.30(b)	§ 102.43.
	§ 102.46.
	§ 102.47.
§ 102.30(c)	Deleted.
§ 102.30(d)	§ 102.47(a).
	§ 102.47(b).
§ 102.31(a)	§ 102.48.
	§ 102.49(c).
	§ 102.50.
§ 102.31(b)	§ 102.51.
§ 102.31(c)	§ 102.52.
§ 102.31(d)	§ 102.52.
§ 102.31(e)	§ 102.53(b)(1).
	§ 102.53(c)(2).
§ 102.31(f)	§ 102.58(b)(3).
	§ 102.58(c)(2).
§ 102.32(a)(1)	§ 102.21(a)
§ 102.32(a)(2)	§ 102.21(b)
§ 102.32(a)(3)	§ 102.55.
§ 102.32(a)(4)	Deleted.
§ 102.32(b)	Deleted.
§ 102.32(c)	§ 102.32(f)
§ 102.33(a)	§ 102.23(a)
§ 102.33(b)	Deleted.
§ 102.33(c)	§ 102.56
§ 102.33(d)	Deleted.
§ 102.33(e)	§ 102.57
§ 102.33(f)	§ 102.58
§ 102.33(g)	§ 102.58(d)
	§ 102.58(e)
§ 102.33(h)	Deleted.
§ 102.34	§ 102.59
§ 102.35(a)	§ 102.27(d)(uosp).
§ 102.35(b)	§ 102.27(d) (1–3).
§ 102.35(c)	§ 102.27(e).
§ 102.36(a)	§ 102.27(a).
§ 102.36(b)	§ 102.27(b).
§ 102.36(c)	§ 102.27(c).
§ 102.37	§ 102.54.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. It makes SBA's FOIA and PA procedures clearer and will institute governmental efficiencies at no cost to small businesses. It will not, however, have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 102

Freedom of information, Privacy.

13 CFR Part 137

Classified information.

Accordingly, pursuant to the authority set forth in the Freedom of Information Act (5 U.S.C. 552); the Privacy Act of 1974 (5 U.S.C. 552a), Executive Order 12600, and Executive Order 12968, SBA amends chapter I of Title 13 of the Code of Federal Regulations, as follows:

1. Part 102 is revised to read as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY

Subpart A—Disclosure of Information

Sec.

Subpart B—The Privacy Act

Authority: 5 U.S.C. 552 and 552a; 31 U.S.C. 1 *et seq.* and 67 *et seq.*; 44 U.S.C. 3501 *et seq.*; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

Subpart A—Disclosure of Information

§ 102.1 What does this subpart do?

This subpart describes the procedures by which the SBA makes documents available under the Freedom of Information Act (''FOIA'') (5 U.S.C. 552).

§ 102.2 How can I get records from SBA?

(a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.

(b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you want. If you don't know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, FOIA & PA Office, 409 Third Street S.W., Suite 5900, Washington D.C. 20416. The office receiving your letter will forward it to the correct office.

§ 102.3 How long will it take for SBA to respond to my request for records?

(a) If you have met the fee requirements of § 102.8, SBA will respond within 10 working days after the correct office receives your request, unless you have requested an especially large number of records, the records are not located in the office handling the request, or SBA needs to consult with another government office.

(b) If you make your request on behalf of another person, SBA will respond within 10 working days after you present a document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the authorization needed.

(c) If you send your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(d) If SBA determines that one of the circumstances described in paragraph (a) of this section apply, it will respond within 20 working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

§ 102.4 How will SBA respond to my request?

Within the time limit described in § 102.3, SBA will either:

(a) Give you all the records you requested;

(b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision; or

(c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

§ 102.5 If SBA grants my request, which records will be supplied?

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

§ 102.6 How will SBA respond to requests for business information?

(a) Business information is a trade secret, or commercial or financial information, contained in records provided to SBA by any person and which may be protected from disclosure under Exemption Four of FOIA (5 U.S.C. 552(b)(4)).

(b) The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary, such as a bank.

(c) SBA will disclose upon request business information that has previously been released to the general public.

(d) If you request business information submitted to SBA prior to March 1, 1996 which has not previously been released to the general public, SBA will notify the submitter of your request upon SBA's receipt of it if SBA intends to release that information. SBA will give the submitter 5 working days to identify information the disclosure of which would likely cause substantial competitive harm and why that harm would occur unless SBA intends to deny your request in full.

(e) If you request business information submitted to SBA after March 1, 1996 which has not previously been released to the general public, SBA will notify the submitter if it intends to release business information which either the submitter has previously claimed or which SBA believes to be confidential and the disclosure of which would cause substantial competitive harm. The submitter will have 5 working days to object to the disclosure, explaining why the harm would occur.

(f) Whenever a submitter objects to disclosure, SBA will consider the submitter's objections, but will not be bound by it. If SBA discloses information despite a submitter's objection, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by FOIA. In this notice, SBA will tell the submitter when and what it intends to disclose.

(g) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

§ 102.7 What are the procedures for submitters of business information to SBA after March 1, 1996?

Submitters may identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed. The identification shall lapse after 10 years, unless renewed in writing.

§ 102.8 What fees will SBA charge?

(a) *Basic fees.* (1) *For manual record search.* SBA will charge $18 per hour.

(2) *For computer record searches.* SBA will charge the actual costs.

(3) *For review and disclosure determinations.* SBA will charge $18 per hour.

(4) *Duplication.* SBA will charge 10 cents per page for photocopy duplication, and the actual cost of reproduction for other methods.

(5) *Certifying records.* SBA will charge actual costs.

(6) *For requested special types of delivery other than first-class mail.* SBA may charge the actual cost.

(b) *If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media.* SBA will charge you only for the cost of duplication after the first 100 pages.

(1) *What is an educational institution?* A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) *What is a non-commercial scientific institution?* An organization which is operated solely for the purpose

of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) *What is a representative of an educational or non-commercial scientific institution?* A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.

(4) *What is a representative of the news media?* An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered ''news media'', this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.

(c) *Member of the general public.* If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.

(d) *Commercial requester.* If you are a commercial requester you must pay all the basic fees set forth in paragraph (a) of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.

(e) *How does SBA determine what category of requester I am?* The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.

(f) *Tell us how much you are willing to pay.* To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.

(g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed $25.00, SBA will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than $25.

(h) SBA will waive fees less than $25.

(i) If the fee is more than $250, or if you have a history of failing to pay FOIA fees in a timely manner, SBA will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *Who determines the fee?* The SBA office which processes your request.

(k) *When do you pay the fee?* SBA will bill you when it responds to your request. You must pay within thirty-one calendar days.

(l) *Failure to pay fees.* (1) If you do not pay by the thirty-first day after the billing date, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, SBA may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(m) *Unsuccessful searches.* If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) *Multiple requests.* If you make multiple requests at or about the same time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(o) *Reduction of fees in the public interest.* If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

§ 102.9 How may I appeal a denial of my request for information or a fee determination?

(a) You must write to the Chief, FOIA & PA Office at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual who denied the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

(ii) The fee that office charged.

(iii) The fee, if any, you believe should have been charged.

(iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.

(v) Any other information you deem appropriate.

(d) The Chief will decide your appeal, unless the Chief originally made the determination you are appealing. In that case, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will decide your appeal within 20 working days from the date of its receipt. SBA may have an additional 10 working days if unusual circumstances require.

(f) (1) If you are appealing a decision to deny your request for records, SBA will either:

(i) Give you the records you requested; or

(ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of SBA's decision.

(2) If you are appealing a fee determination, SBA will either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

§ 102.10 How can I get the Public Index of SBA materials?

(a) The Public Index is a document which provides identifying information about official documents which SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can obtain the Public Index from any SBA office.

§ 102.11 What happens if I ask SBA for a record that another Federal agency generated?

Such a request is a request directed to the wrong office, as that term is used in

§ 102.3(c). SBA will forward your request to the generating agency.

§ 102.12 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate.

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) (''PA'') only where an important public policy need for such exemption has been determined pursuant to or under specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose required of SBA by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart;

(b) To those SBA employees who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (FOIA);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law; and

(2) The head of the agency or instrumentality has made a written request to the PA Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(i) To a person showing compelling circumstances affecting the health or safety of an individual. Upon disclosure, SBA will notify such individual at his or her last known address;

(j) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

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

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

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

§ 102.23 Are there special rules about personnel and equal employment opportunity files?

(a) The provisions of parts 293 and 297 of Title 5 of the Code of Federal Regulations govern all SBA files which the Office of Personnel Management determines are personnel files.

(b) The provisions of part 1611 of Title 29 of the Code of Federal Regulations govern all Equal Employment Opportunity complaint files.

§ 102.24 What is a record?

A record is information which SBA maintains on an individual and which includes either his name or an identifying symbol (such as a fingerprint, a social security number (''SSN''), or a photograph.

§ 102.25 What is a system of records?

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

§ 102.26 What does this subpart mean by ''person to whom a record pertains'' or ''you''?

When this subpart refers to the ''person to whom a record pertains'' or uses the pronoun ''you'', it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

§ 102.27 What records are partially exempt from the provisions of the Privacy Act?

(a) The following systems of records are exempt from certain provisions of the PA: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel

Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).

(b) The provisions of the PA from which these systems of records are exempt are subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f) (Agency Rules).

(c) The systems of records described in paragraph (a) of this section are exempt from the provisions of the Privacy Act described in paragraph (b) of this section in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions in paragraphs (a) through (c) of this section, the systems of records described in paragraph (a) of this section numbered SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

(1) Information compiled to identify individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information, including reports of informants and investigators, associated with an identifiable individual compiled to investigate criminal activity; or

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

(e) The systems of records described in paragraph (d) of this section are fully exempt from the PA to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to: (1) Prevent the subjects of Office of Inspector General (OIG) investigations from using the PA to frustrate the investigative process;

(2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;

(3) Protect the confidentiality of other sources of information;

(4) Avoid endangering confidential sources and law enforcement personnel;

(5) Prevent interference with law enforcement proceedings;

(6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;

(7) Prevent the disclosure of investigative techniques; or

(8) Prevent the disclosure of classified information.

§ 102.28 What about information compiled for a civil action?

No individual shall have access to any information compiled by SBA in reasonable anticipation of a civil action or proceeding. In the event of a question as to disclosure, the Systems Manager for the system of records involved will rely on the opinion of the General Counsel or designee, and will also consult with the PA Officer.

§ 102.29 Who administers SBA's responsibilities under the Privacy Act?

The PA Officer has overall responsibility for administering the PA for SBA. A Systems Manager is responsible for administering the PA as to systems of records within an SBA Office.

§ 102.30 How can I write to the Privacy Act Officer?

You can write to the PA Officer at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

§ 102.31 Who appoints Systems Managers?

The senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

§ 102.32 What do Systems Managers do?

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

(a) Acting as the initial contact person for individuals seeking access to or amendment of their records.

(b) Responding to requests for information.

(c) Discussing the availability of records with individuals.

(d) Amending records in cases where amended information is not controversial and does not involve policy decisionmaking.

(e) Informing individuals of any reproduction fees to be charged.

(f) Assuring that their systems of records contain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 102.33 How can I write to a Systems Manager?

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the PA Officer at 409 3rd Street SW., Suite 5900, Washington, D.C. 20416, who will forward your request to the proper Systems Manager.

§ 102.34 How can I see records kept on me?

(a) You may look at any information pertaining to yourself contained in any SBA system of records unless some law or regulation prohibits it.

(b) In order to see this information, you must ask for it in writing, identifying what records you want. The writing should be addressed to the Systems Manager overseeing the system of records containing the record you wish to see.

(c) The Systems Manager (or, when appropriate, the PA Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person to whom the information pertains.

§ 102.35 How long will it take SBA to respond to my request?

The Systems Manager will respond within 10 working days.

§ 102.36 How will SBA respond to my request?

The Systems Manager will inform you that:

(a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or

(b) Your request is granted and you may view your record, in which case he

or she will set forth the time and date for you to review your record in the presence of an SBA employee; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.37 How may I appeal a decision to deny me access to my records?

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

§ 102.38 To whom should my appeal be addressed?

(a) *Denial of a personnel file.* Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20006.

(b) *Denial of an Equal Employment Opportunity Complaint File.* Address an appeal of a denial of a request for an Equal Employment Opportunity Complaint File to the Equal Employment Opportunity Commission, 1801 L Street N.W., Washington, D.C. 20036.

(c) *All other appeals.* Appeal the denial of any other record to the PA Officer. See § 102.30.

§ 102.39 By when must I appeal to the Privacy Act Officer?

Your appeal must reach the PA Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to answer your request, your appeal must reach the PA Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under § 102.35.

§ 102.40 When will SBA respond to my appeal?

The PA Officer will respond to you within 30 working days of the date when your appeal was received.

§ 102.41 How will SBA respond to my appeal?

The PA Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.42 How can I get SBA to amend a record kept on me?

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the PA Officer, who will forward it to the right Systems Manager. See § 102.30.

§ 102.43 What should my petition say?

Your petition should include the following:

(a) In what system of records the record you want amended is kept.

(b) What record you want amended.

(c) What specific information in that record you want amended.

(d) Why you want the record amended.

(e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record.

(f) What the record should say.

§ 102.44 For what reasons will SBA amend my record?

SBA seeks to maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

(a) The record is not accurate.

(b) The record is not relevant to any legitimate SBA concern.

(c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.

(d) The record is incomplete. There may be additional information relevant to the material contained in the record.

§ 102.45 Will SBA ask me for more information after I make my request?

Perhaps, in which case the procedures of § 102.34(c) shall apply.

§ 102.46 When will SBA respond to my request?

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

§ 102.47 How will SBA respond to my request?

The Systems Manager will:

(a) Make the amendment you request, and send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, in a different manner, sending all individuals who had previously received a copy of that record a copy of the amended record and, in addition, telling you why your request was not granted in full and what appeal rights you have; or

(c) Decline to amend the record, explaining why your request was not granted and telling you of your appeal rights.

§ 102.48 How do I appeal a refusal to amend a record kept on me?

Your appeal should be in writing and include the following:

(a) All of the information contained in your original request to amend the record;

(b) Any response of the Systems Manager, including any reasons for denying your request; and

(c) Any information you wish to submit in response to the Systems Manager's findings.

§ 102.49 To whom should I address my appeal?

(a) *Personnel file.* Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) *Equal Employment Opportunity Complaint File.* Address your appeal to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Address your appeal to the PA Officer. See § 102.30.

§ 102.50 By when must I submit my appeal?

Your appeal must be received by the PA Officer within 30 calendar days of the date the Systems Manager declined to amend your records, or within 90 calendar days of the date the Systems Manager should have responded under § 102.46 if the Systems Manager did not so respond.

§ 102.51 By what standards will the Privacy Act Officer review my appeal?

The PA Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in § 102.44. The PA Officer will review all relevant information and may seek the views of other SBA personnel. The PA Officer may review information not available to or not used by the Systems Manager.

§ 102.52 When will SBA respond to my appeal?

The PA Officer will respond to your appeal within 30 working days of its

receipt, unless the Administrator determines that unusual circumstances exist, in which case the PA Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

§ 102.53 How will SBA respond to my appeal?

The PA Officer will:

(a) Make the amendment you request, sending all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record in a different manner; or decline to amend it at all:

(1) Sending all individuals who had previously received a copy of that record a copy of the amended record;

(2) Telling you why your request was not granted in full and that you can seek judicial review; and

(3) Marking the areas of dispute, including your statement of disagreement in the file, and, if appropriate, a concise statement of why SBA refused to amend the record as you requested, sending this material to all individuals who had previously received a copy of that record.

§ 102.54 How can I obtain judicial review of an SBA Privacy Act decision?

You may bring a civil action against SBA in a United States district court if the SBA:

(a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;

(b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to you that may be made on the basis of such records, and consequently a determination is made which harms you; or

(c) Fails to comply with any other provisions of the PA (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

§ 102.55 What must SBA tell the individuals from whom it collects information?

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

(a) Whether disclosure of the information is voluntary or mandatory;

(b) By what authority SBA is collecting the information;

(c) For what principal purpose or purposes SBA is collecting the information;

(d) What routine uses might be made of that information; and

(e) What will happen if the information isn't supplied.

§ 102.56 Will SBA release my name or address?

No, unless compelled to by law.

§ 102.57 Do I have to give SBA my SSN?

(a) No. You need not give SBA your SSN, even if SBA asks for it.

(b) If SBA asks you for your SSN, it must tell you under what authority it seeks your SSN, and for what purpose.

(c) SBA cannot withhold a benefit solely because you refuse to tell it your SSN.

§ 102.58 When will SBA show personnel records to a representative?

(a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.

(b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

§ 102.59 What fees will SBA charge me for my records?

SBA will charge you only for photocopying at the rate of 10 cents per page. SBA will not charge you for finding or reviewing your records. Fees less than $25 will be waived.

§ 102.60 May I be informed of disclosures made of my records?

SBA will tell you what disclosures it made of your records if you ask, except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

§ 102.61 Are there Matching Program procedures?

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a, 552a notes). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any federal agency, contractor of any federal agency, state or local government, or agency of any state or local government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of any such agreement by writing to the Privacy Act Officer.

PART 137—[REMOVED]

2. Part 137 is removed.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–1159 Filed 1–26–96; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 103

Standards for Conducting Business With SBA

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is streamlining its regulations by eliminating many rules and simplifying and improving those that remain. This final rule reorganizes and streamlines the entire Part 103, which covers the standards one must meet to conduct business with SBA. It makes the standards clearer and more understandable to those who are regulated, and easier for SBA to enforce.

EFFECTIVE DATE: This rule is effective February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Dowd, Director, Office of Loan Programs, at (202) 205–6490.

SUPPLEMENTARY INFORMATION: Title 13 CFR Part 103 contains SBA's policies governing the standards for suspending

or revoking the privileges of persons who conduct business with SBA on behalf of applicants or lenders. This final rule reorganizes and streamlines Part 103, making it easier to understand and enforce. It changes the title of the Part to ''Standards for Conducting Business with SBA'' to describe more clearly the scope of the regulations. The sections stating the statutory provisions underlying the Part and its purpose—103.13 and 103.13–1—are eliminated as unnecessary. The rule renumbers the sections that remain: present §§ 103.13–2 through 103.13–6 would become §§ 103.1–103.5. The final rule clarifies the existing definition of agents who appear before SBA on behalf of applicants for assistance, adds definitions for ''packagers'', ''lender service providers,'' and ''referral agents'', and provides that these categories of agents are specifically covered by SBA's requirements governing conduct of business. It also amends, in certain respects, and adds greater specificity to the definition of ''good cause'' for which the Administrator may revoke or suspend the privilege for conducting business with SBA. It adds provisions prescribing the use and form of lender service provider agreements which must contain certain provisions regarding services to be provided and compensation, including a prohibition on secondary market premium sharing. In addition to these substantive changes, the final rule is written in clearer, more straightforward language than the present Part.

The proposed rule was published on November 24, 1995 at 60 FR 57980. A total of 26 commenters, virtually all Certified Development Companies, contacted SBA during the comment period with suggestions and observations about the proposed rule. All commenters expressed at least some level of concern about the proposal. In general, these concerns were based on the breadth of the proposed rule.

A majority of the commenters offered negative observations about the scope of the definitions in section 103.1. Most of these comments focused on subsections (a) and (b) and criticized the definitions of the terms ''agent'' and ''conduct business with SBA.'' Many of these commenters were particularly concerned about the definitions in light of SBA's expressed intention (in the preamble to the proposed rule) to register and train agents, and to require under section 103.5 that all agents execute and provide to SBA a compensation agreement.

The final rule addresses this concern by clarifying that only those persons or entities conducting business with SBA—those who actually prepare or submit on behalf of an applicant an application for assistance and those contractors who provide services to participants in SBA's business loan program pursuant to written agreements with those participants—will be considered ''agents''. SBA does not intend to regulate persons or entities, such as real estate appraisers and environmental specialists, who simply supply information that is used in the preparation of an application.

Fourteen commenters criticized section 103.4, which defines ''good cause'' for suspension or revocation of the privilege to conduct business with SBA. In general, the comments about section 103.4 criticized terms such as ''unethical activity'' and ''reasonable fees'' as too broad and vague. More specifically, three commenters complained that persons and entities should be allowed under subsection 103.4(d) to use the words ''Small Business Administration'' or ''SBA'' in advertising. Four commenters felt that the ''two master'' prohibition in subsection 103.4(g) should be clarified.

SBA intends to provide guidelines in its Standard Operating Procedures (SOP) for what will constitute ''unethical activity'' and ''reasonable fees.'' The final rule states that persons may use the words ''Small Business Administration'' or ''SBA'' in advertisements if the advertisement does not imply endorsement or sponsorship by SBA. The final rule continues to prohibit the use of the SBA seal or symbol in advertisements. The ''two master'' rule and the exceptions to it have been substantially altered in the final rule. The two master rule will now only apply when a person or entity acts as both a lender service provider or referral agent and packager for an applicant on the same business loan *and* receives compensation for such activity from both the lender and applicant. The two exceptions stated in the proposed rule have therefore been deleted and replaced by only one: cases in which a referral agent also acts as a packager and is compensated by both the lender for referral agent activities and the applicant for packaging activities.

Finally, 14 commenters noted problems with section 103.5, which governs the regulation of an agent's fees and provision of services. These complaints related directly to many of the same commenters' concerns about the scope of the definition of ''agent'' in section 103.1. The changes in the definition of ''agent'' discussed above address this problem. Several commenters questioned SBA's ability to review all compensation agreements for reasonableness. Section 103.5 does not require such a review and SBA does not intend to evaluate each compensation agreement for reasonableness; it will only undertake a review if an applicant requests that it do so. Two commenters also noted that use of the terms ''compensation agreement'' and ''lender service provider agreement'' should be made consistent in subsections 103.5 (a) and (b). The final rule has been amended to make clear the distinction between the terms and the intended treatment of each type of agreement.

As noted above and in the preamble to the proposed rule, SBA intends to require all packagers and lender service providers to register with SBA for purposes of keeping track of who is performing such activities on behalf of applicants for assistance or lenders. SBA will provide training for anyone or any entity that wishes to represent applicants for SBA assistance or provide services to lenders. The development of these initiatives will take place over the next fiscal year, in consultation with representatives of the affected industries. To the extent that they require modifications of this final rule, such modifications will be made in later rulemakings.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule involves internal administrative procedures and is not a significant rule within the meaning of Executive Order 12866 and will not 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.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 103

Administrative practice and procedure.

Accordingly, pursuant to the authority set forth in sections 5 and 13 of the Small Business Act, 15 U.S.C. 634 and 642, SBA hereby revises part 103 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an applicant or participant by conducting business with SBA.

(b) The term *conduct business with SBA* means:

(1) Preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) Preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) Participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf;

(4) Acting as a lender service provider; and

(5) Such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a ''Lender Service Provider'' on a loan-by-loan basis.

(e) *Packager* means an Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a ''Packager'' on a loan-by-loan basis.

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

(g) *Participant* means a person or entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

§ 103.2 Who may conduct business with SBA?

(a) If you are an Applicant, a Participant, a partner of an Applicant or Participant partnership, or serve as an officer of an Applicant, Participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an Agent, you may conduct business with SBA on behalf of an Applicant, Participant or lender, unless representation is otherwise prohibited by law or the regulations in this part or any other part in this chapter. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any Agent supply written evidence of his or her authority to act on behalf of an Applicant, Participant, or lender as a condition of revealing any information about the Applicant's, Participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an Agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any Agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under Part 134 of this chapter.

§ 103.4 What is ''good cause'' for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an Applicant by another entity when there is an undisclosed business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the Agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an Applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, advertising using the words *Small Business Administration* or *SBA* in a manner that implies SBA's endorsement or sponsorship, use of SBA's seal or symbol, and giving a ''guaranty'' to an Applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or Lender Service Provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, conspiracy, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to this ''two master'' prohibition exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the Applicant has been made aware.

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

(a) Any Applicant, Agent, or Packager must execute and provide to SBA a compensation agreement, and any Lender Service Provider must execute and provide to SBA a Lender Service Provider agreement. Each agreement governs the compensation charged for services rendered or to be rendered to the Applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of Lender Service Provider agreement to be used by Agents.

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the Agent or Packager must: reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the Applicant, and refrain from charging or collecting, directly or indirectly, from the Applicant an amount in excess of the amount SBA deems reasonable.

(c) Each Lender Service Provider must enter into a written agreement with each lender for whom it acts in that capacity. SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA's suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for Lender Service Providers. However, such compensation may not be directly charged to an Applicant or borrower.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1350 Filed 1–26–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Parts 112, 113, 124, 132, 134, and 136

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This final rule essentially reorganizes all but two of the regulations pertaining to procedures before the Office of Hearings and Appeals (OHA) and consolidates them into one part. In addition, the rule clarifies, simplifies, and significantly shortens those regulations. A number of substantive changes are also made.

DATES: This rule is effective February 28, 1996. This rule applies with respect to all cases filed with OHA on or after February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Fox, Chief Counsel for Special Litigation, Office of General Counsel, Small Business Administration, 409 Third Street SW., Washington, D.C. 20416, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This rule consolidates most existing regulations governing proceedings before OHA into part 134 with the exception of those solely relating to 8(a) program proceedings, which are set forth in part 124 of this chapter, and those solely pertaining to proceedings under the Program Fraud Civil Remedies Act, which are contained in part 142 of this chapter. This rule also clarifies, simplifies, and revises the current rules, reorganizes sections for ease of use, and eliminates unnecessary provisions.

The rule is divided into four subparts. Subpart A contains general rules. Subpart B contains rules of practice generally applicable to all cases before OHA except size and SIC code appeals. However, as set forth in § 134.201, in the case of a conflict between a particular rule in part 134, and a rule of procedure pertaining to OHA appearing in another part of this title, the latter rule shall govern. Subpart C contains the rules applicable to size and SIC code appeals. Subpart D contains the rules for implementation of the Equal Access to Justice Act, currently contained in part 132.

Proposed changes to parts 132 and 134 were published in the Federal Register on November 27, 1995 (60 FR 58282). The public was invited to comment during a thirty-day comment period. SBA received no comments concerning these parts during that time period. Accordingly, the following final rule contains no changes, other than minor clarifications, technical corrections, and deletions of unnecessary language.

The proposed rule consolidated into part 134 rules of practice only applicable to 8(a) program appeals. However, part 124 of chapter 13 is not being amended at this time and, thus, certain of the provisions in the proposed rule which solely related to the 8(a) program have been deleted as unnecessary in light of the existing part 124. Specifically, proposed §§ 134.104, 134.203(a)(2), 134.213, 134.222 (a) and (b), 134.223 (c) and (d), 134.224, 134.226(b), and 134.227(a) have been deleted, in whole or in part, so as to eliminate references to 8(a) program appeals.

For a detailed description of the other changes made to this rule, please refer to SBA's proposed rule, published at 60 FR 58282 (November 27, 1995).

Finally, parts 112, 113, 124, and 136 are amended so that the citations, within those parts, to specific sections of part 134 will correspond to the section numbers set forth in this rule.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule would reorganize and simplify the rules governing procedures before SBA's Office of Hearings and Appeals. Contracting opportunities and financial assistance for small business are not affected by this rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects

13 CFR Part 132

Claims, Equal Access to Justice, Lawyers.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the above reasons, and under the authority of 15 U.S.C. 634(b)(6), SBA hereby amends 13 CFR Chapter I as follows:

1. Part 134 is revised to read as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Subpart A—General Rules

Sec.

Subpart B—Rules of Practice for Most Cases

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

Subpart D—Implementation of the Equal Access to Justice Act

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

Subpart A—General Rules

§ 134.101 Definitions.

As used in this part:

AA/OHA means the Assistant Administrator for OHA.

Act means the Small Business Act, 15 U.S.C. 631 et seq.

Address means the primary home or business address of a person or entity, including the street location or postal box number, city or town, state, and postal zip code.

Area Office means a Government Contracting Area Office or a Disaster Area Office of the Small Business Administration.

Day means a calendar day, unless a Judge specifies otherwise.

Hearing means the presentation and consideration of argument and evidence. A hearing need not include live testimony or argument.

Investment Act means the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq.

Judge means an Administrative Law Judge or an Administrative Judge of OHA, or the AA/OHA when he or she acts as an Administrative Judge.

OHA means the Office of Hearings and Appeals.

Party means the petitioner, respondent, or intervenor.

Person means an individual or any form of business entity.

Petition means a written complaint, a written appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

Pleading means a petition, an order to show cause commencing a case, an appeal petition, an answer, or any amendment or supplement to those documents.

Respondent means any person or governmental agency against which a case has been brought before OHA.

SBA means the Small Business Administration.

SIC code means Standard Industrial Classification code.

Size determination means a formal size determination made by an Area Office.

§ 134.102 Jurisdiction of OHA.

OHA has authority to conduct proceedings in the following cases:

(a) The revocation or suspension of Small Business Investment Company licenses, cease and desist orders, and the removal or suspension of directors and officers of licensees, under the Investment Act and part 107 of this chapter;

(b) Alleged violations of those civil rights laws which are effectuated by parts 112, 113, 117, and 136 of this chapter;

(c) The revocation of the privilege of a person to conduct business with SBA under the Act and part 103 of this chapter;

(d) The eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in SBA loan programs under the Act and part 120 of this chapter;

(e) The suspension or termination of surety bond program participants under

15 U.S.C. 694a et seq. and part 115 of this chapter;

(f) The rights, privileges, or obligations of development companies under section 504 of the Investment Act and part 120, subpart H, of this chapter;

(g) Allowance of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504;

(h) Debarment from appearance before the SBA because of post-employment restrictions under 18 U.S.C. 207 and part 105 of this chapter;

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter;

(j) Appeals from the following SBA 8(a) program determinations under the Act and part 124 of this chapter:

(1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion an 8(a) contract; and

(2) Program suspension;

(k) Appeals from size determinations and SIC code designations under part 121 of this chapter;

(l) The imposition of civil penalties and assessments against persons who make false claims or statements to SBA under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and part 142 of this chapter; and

(m) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA.

§ 134.103 Rules applicable to time periods provided in this part.

(a) The day from which the time period is computed is excluded, but the last business day is counted, excluding Saturday, Sunday, or Federal holiday.

(b) At the Judge's initiative, or upon the motion of a party showing good cause, the Judge may modify any of the applicable time limits, other than those established by statute and those governing when a case may be commenced. Any motion to extend a time limit must be filed and served before the expiration of that time limit.

Subpart B—Rules of Practice for Most Cases

§ 134.201 Scope of the rules in this subpart B.

The rules in this subpart generally apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and SIC code designations. Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively, in parts 124 and 142 of this chapter. In the case of a conflict between a particular rule in this part, and a rule of procedure pertaining to OHA appearing in another part of this chapter, the latter rule shall govern.

§ 134.202 Commencement of cases.

A case may be commenced by filing a written petition within the following time periods:

(a) Except as provided by paragraphs (b) through (d) of this section, no later than 45 days from the date of service of the SBA action or determination to which the petition relates;

(b) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(c) In applications for an award of fees pursuant to subpart D of this part, no later than 30 days after the decision to which it applies becomes final;

(d) For 8(a) program suspension proceedings, see § 124.211 of this chapter.

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A clear and concise statement of the factual basis of the case;

(3) The relief being sought; and

(4) The name, address, telephone number, and signature of the petitioner or its attorney.

(b) A petition which does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

§ 134.204 Service and filing requirements.

(a) *Service.* Each party is responsible for the service of its pleadings and other submissions upon all other parties or their attorneys. Unless otherwise ordered by the Judge, service is made by providing each party, or its attorney, with a copy of the pleading or other submission by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Service by mail must be directed as follows:

(1) To a party's last-known residence or business address if it has not yet appeared in the case, or to the address of a party which has appeared as shown in its submission;

(2) If a party has appeared in the case through an attorney, to the address of the attorney shown in the party's submission or in a notice of appearance;

(3) If SBA is the party, unless an attorney has been specified in SBA's submissions to OHA, by mailing to: Office of General Counsel, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

(b) *Filing.* (1) All pleadings and other submissions must be filed with OHA by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Filing may only be accomplished at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

(2) If filing is by personal delivery or commercial delivery service, such filing must be accomplished between the hours of 8:30 a.m. and 5:00 p.m. If filing is by facsimile transmission, the telephone number to be used may be obtained by calling OHA.

(c) *Copies.* Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original.

(d) *Certificate of service.* A signed certificate stating how and when service was made on all parties must be attached to each pleading or other submission filed with OHA.

(e) *Date.* Unless otherwise specified by the Judge, the date of service or filing is as follows:

(1) If by facsimile transmission, the date of transmission.

(2) If by first-class mail, the date of postmark. Where the postmark is illegible or incomplete, there is a rebuttable presumption that the postmark was dated five days prior to the date of receipt.

(3) If by personal delivery, express mail, or commercial delivery service, the date of receipt.

(f) *Confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be served upon parties so long as the deletions are clearly identified and generally described in the documents which are served. Upon motion, the Judge may direct that the withheld information be provided to other parties, subject to any appropriate protective order.

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 20 days after service of the petition or order to show cause, the respondent may serve

and file a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The serving and filing of a motion for a more definite statement stays the time for serving and filing an answer. The Judge will establish the time for serving and filing an answer.

§ 134.206 The answer.

(a) A respondent must serve and file an answer within 45 days after the service of a petition or order to show cause, except that debt collection proceeding answers are due within 30 days.

(b) The answer must contain the following:

(1) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(2) Any affirmative defenses; and

(3) The name, address, telephone number, and signature of the respondent or its attorney.

(c) Allegations in the petition or order to show cause which are not answered in accordance with paragraph (b)(1) of this section will be deemed admitted unless injustice would occur.

(d) Upon an appeal from an SBA determination concerning the 8(a) program, SBA must serve and file the administrative record pertaining to that determination within the same time period applicable to the service and filing of its answer. If SBA fails to do so, the Judge will issue an order directing SBA to serve and file the administrative record by a specified date.

(e) If the respondent fails to serve and file an answer within the time period set forth in paragraph (a) of this section, or within any extended time period granted by the Judge, that failure will constitute a default. Following such a default, the respondent may be prohibited from participating further in the case, except to serve and file the administrative record in accordance with paragraph (d) of this section.

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter.

(b) *Supplements.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.

(c) *8(a) appeals.* In 8(a) program appeals, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer.* In an order permitting the serving and filing of an amended or supplemented petition or order to show cause, the Judge will establish the time for serving and filing an answer.

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by a duly licensed attorney. A member of a partnership may represent the partnership, and an officer may represent a corporation, trust, or association.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must serve and file a written notice of appearance.

(c) An attorney seeking to withdraw from a case must serve and file a motion for the withdrawal of his or her appearance.

§ 134.209 Requirement of signature.

Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney. By signing the submission, a party or its attorney attests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment.

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until final decision.

(b) *By interested persons.* Any individual, partnership, association, corporation, trust, or governmental agency may move to intervene at any time until final decision by serving and filing a motion to intervene containing a statement of the movant's interest in the case and the necessity for intervention to protect such interest. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

§ 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief.

(b) *Response.* No later than 20 days after the service of a motion, all non-moving parties must serve and file a response or be deemed to have consented to the relief sought. Unless the Judge directs otherwise, the moving party will have no right to reply to a response, nor will oral argument be heard on the motion.

(c) *Service of orders.* OHA will serve upon all parties any written order issued in response to a motion.

§ 134.212 Summary decision.

(a) *Grounds.* A party may move for summary decision at any time as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion.* The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions.* In its response to a motion for summary decision, a party may cross-move for summary decision. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay.* A motion for summary decision stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

§ 134.213 Discovery.

(a) *Motion.* A party may obtain discovery only upon motion, and for good cause shown. For 8(a) program appeals other than those involving suspensions, see § 124.210 of this chapter.

(b) *Forms.* The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations.* Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance, undue burden or expense, privilege, or confidentiality.

§ 134.214 Subpoenas.

(a) *Availability.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring

a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests.* A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service.* A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash.* A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

§ 134.215 Interlocutory appeals.

(a) *General.* A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification.* A party must serve and file a motion for certification no later than 20 days after issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite resolution of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay while an interlocutory appeal is pending will be at the discretion of the Judge.

§ 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge. Settlement negotiations, and rejected settlement agreements, are not admissible into evidence.

§ 134.218 Judges.

(a) *Assignment.* The AA/OHA will assign all cases subject to the Administrative Procedure Act, 5 U.S.C. 551 et seq., to an Administrative Law Judge. The AA/OHA will assign all other cases before OHA to either an Administrative Law Judge or an Administrative Judge, or, if the AA/OHA is a duly licensed attorney, to himself or herself.

(b) *Authority.* Except as otherwise limited by this part, or by statute or other regulation, a Judge has the authority to take all appropriate action to ensure the efficient, prompt, and fair determination of a case, including, but not limited to, the authority to administer oaths and affirmations and to subpoena and examine witnesses.

(c) *Recusal.* Upon the motion of a party, or upon the Judge's own initiative, a Judge will promptly recuse himself or herself from further participation in a case whenever disqualification is appropriate due to conflict of interest, bias, or some other significant reason. A denial of a motion for recusal may be immediately appealed to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

§ 134.219 Sanctions.

A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(a) Fails to comply with an order of the Judge;

(b) Fails to comply with the rules set forth in this part;

(c) Acts in bad faith or for purposes of delay or harassment;

(d) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(e) Otherwise acts in an unethical or disruptive manner.

§ 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to the merits of a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

§ 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in the efficient, prompt, and fair determination of the case. The conference may be recorded verbatim at the discretion of the Judge, and, if so, a party may purchase a transcript, at its own expense, from the recording service.

§ 134.222 Oral hearing.

(a) *Availability.* A party may obtain an oral hearing only if:

(1) It is required by regulation; or

(2) Following the motion of a party, or at his or her own initiative, the Judge orders an oral hearing upon concluding that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses; or

(3) In 8(a) program appeals other than those involving suspensions, the requirements of § 124.210 of this chapter are met.

(b) *Place and time.* The place and time of oral hearings is within the discretion of the Judge, who shall give due regard to the necessity and convenience of the parties, their attorneys, and witnesses. The Judge may direct that an oral hearing be conducted by telephone.

(c) *Public access.* Unless otherwise ordered by the Judge, all oral hearings are public.

(d) *Payment of subpoenaed witnesses.* A party which obtains a witness' presence at an oral hearing by subpoena, must pay to that witness the fees and mileage costs to which the witness would be entitled in Federal Court.

(e) *Recording.* Oral hearings will be recorded verbatim. A transcript of a

recording may be purchased by a party, at its own expense, from the recording service.

§ 134.223 Evidence.

(a) *Federal Rules of Evidence.* Unless contrary to a particular rule in this part, or an order of the Judge, the Federal Rules of Evidence will be used as a general guide in all cases before OHA.

(b) *Hearsay.* Hearsay evidence is admissible if it is deemed by the Judge to be relevant and reliable.

§ 134.224 Standards for decision.

The decision of a Judge will be based upon a preponderance of the evidence.

§ 134.225 The record.

(a) *Contents.* The record of a case before OHA will consist of all pleadings, motions, and other non-evidentiary submissions, all admitted evidence, all orders and decisions, and any transcripts of proceedings in the case.

(b) *Public access.* Except for information subject to a protective order, proprietary or confidential information withheld in accordance with this part, or any other information which is excluded from disclosure by law or regulation, the record will be available at OHA for public inspection during normal business hours. Copies of the documents available for public inspection may be obtained by the public upon payment of any duplication charges.

(c) *Closure.* The Judge will set the date upon which the pre-decisional record of the case will be closed, and after which no additional evidence or argument will be accepted.

§ 134.226 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of relevant law, reasons for such findings and conclusions, and any relief ordered. The contents of the record will constitute the exclusive basis for a decision.

(b) *Time limits.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter must be rendered within 60 days after a petition is filed.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits shall be a final decision, upon issuance, in proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982 and part 140 of this chapter.

(b) *Initial decisions.* All decisions on the merits other than those set forth in paragraph (a) of this section are initial decisions. However, unless a request for review is filed pursuant to § 134.228(a), an initial decision shall become the final decision of SBA 30 days after its issuance.

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision, any party, or SBA's Office of General Counsel, may serve and file with OHA a request for review. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

(b) *Response.* Within 20 days after the service of a request for review, any party, or SBA's Office of General Counsel, may serve and file with OHA a response. A party must serve its response upon all other parties and upon SBA's Office of General Counsel.

(c) *Transfer of the record.* Upon receipt of all responses, or 30 days after the filing of a request for review, whichever is earlier, OHA will transfer the record of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* The Administrator, or his or her designee, will:

(1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or

(2) Remand the initial decision to the Judge for appropriate further proceedings.

§ 134.229 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision by a Judge resolving all material issues of fact and law unless the case is subsequently remanded for appropriate further proceedings, pursuant to § 134.228(e)(2).

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

§ 134.301 Scope of the rules in this subpart C.

The rules of practice in this subpart C apply to all appeals to OHA from:

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) SIC code designations, pursuant to part 121 of this chapter.

§ 134.302 Who may appeal.

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a SIC code designation. However, with respect to an 8(a) contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

§ 134.303 No absolute right to an appeal from a size determination.

It is within the discretion of the Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, he or she will issue an order denying review, and specifying the reasons for the decision.

§ 134.304 Commencement of appeals from size determinations and SIC code designations.

(a) Appeals from size determinations and SIC code designations must be commenced by serving and filing an appeal petition as follows:

(1) If appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be served and filed within 15 days after service of the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be served and filed within 30 days after service of the size determination;

(3) If appeal is from a SIC code designation, then the appeal petition must be served and filed within 10 days after the issuance of the initial

invitation for bids or initial request for proposals or quotations.

(b) An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

§ 134.305 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

(1) The Area Office which issued the size determination, or the contracting office which designated the SIC code;

(2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Service of size determination appeals.* The appellant must serve the appeal petition upon each of the following:

(1) The SBA official who issued the size determination;

(2) The contracting officer responsible for the procurement affected by a size determination;

(3) The business concern whose size status is at issue;

(4) All persons who filed protests; and

(5) SBA's Office of General Counsel.

(c) *Service of SIC appeals.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.

§ 134.306 Transmission of the case file.

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

§ 134.307 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.

(a) Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.310 Discovery.

Discovery will not be permitted in appeals from size determinations or SIC code designations.

§ 134.311 Oral hearings.

Oral hearings will not be held in appeals from SIC code designations, and will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of § 134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

The following sections from subpart B of this part apply to an appeal under this subpart C: § 134.207(a) (pertaining to amendments to pleadings); § 134.208 (Representation in cases before OHA); § 134.209 (Requirement of signature); § 134.210 (Intervention); § 134.211 (Motions); § 134.214 (Subpoenas); § 134.218 (Judges); § 134.219 (Sanctions); and § 134.220 (Prohibition against *ex parte* communications).

§ 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

§ 134.315 The record.

Where relevant, the provisions of § 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

§ 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.317 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision.

§ 134.318 Return of the case file.

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

Subpart D—Implementation of the Equal Access to Justice Act

§ 134.401 What is the purpose of this subpart?

The Equal Access to Justice Act, 5 U.S.C. 504, establishes procedures by which prevailing parties in certain

administrative proceedings may apply for reimbursement of fees and other expenses. Eligible parties may receive awards when they prevail over SBA, unless SBA's position in the proceeding was ''substantially justified'' or, as provided in § 134.405(b), special circumstances make an award unjust. The rules of this subpart explain which OHA proceedings are covered, who may be eligible for an award of fees and expenses, and how to apply for such an award.

§ 134.402 Under what circumstances may I apply for reimbursement?

You may apply for reimbursement under this subpart if you meet the eligibility requirements in § 134.406 and you prevail over SBA in a final decision in:

(a) The type of administrative proceeding which qualifies as an ''adversary adjudication'' under § 134.403; or

(b) An ancillary or subsidiary issue in that administrative proceeding that is sufficiently significant and discrete to merit treatment as a separate unit; or

(c) A matter which the agency orders to be determined as an ''adversary adjudication'' under 5 U.S.C. 554.

§ 134.403 What is an adversary adjudication?

For purposes of this subpart, adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge (''ALJ''). These adjudications (''administrative proceedings'') include those proceedings listed in § 134.102 (a), (i), and (j)(1), but do not include other OHA proceedings such as those listed in § 134.102(k). In order for an administrative proceeding to qualify, SBA must have been represented by counsel or by another representative who enters an appearance and participates in the proceeding.

§ 134.404 What benefits may I claim?

You may seek reimbursement for certain reasonable fees and expenses incurred in prosecuting or defending a claim in an administrative proceeding.

§ 134.405 Under what circumstances are fees and expenses reimbursable?

(a) If you are a prevailing eligible party, you may receive an award for reasonable fees and expenses unless the position of the agency in the proceeding is found by the ALJ to be ''substantially justified'', or special circumstances exist which make an award unjust. The ''position of the agency'' includes not only the position taken by SBA in the administrative proceeding, but also the position which it took in the action which led to the administrative proceeding. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding. However, upon your assertion that the position of SBA was not substantially justified, SBA will be required to establish that its position was reasonable in fact and law.

(b) The ALJ may reduce or deny an award for reimbursement if you have unreasonably protracted the administrative proceeding or if other special circumstances would make the award unjust.

(c) Awards for fees and expenses incurred before the date on which an administrative proceeding was initiated are allowable only if you can demonstrate that they were reasonably incurred in preparation for the proceeding.

§ 134.406 Who is eligible for possible reimbursement?

(a) You are eligible for possible reimbursement if:

(1) You are an individual, owner of an unincorporated business, partnership, corporation, association, organization, or unit of local government; and

(2) You are a party, as defined in 5 U.S.C. 551(3); and

(3) You are the prevailing party; and

(4) You meet certain net worth and employee eligibility requirements set forth in § 134.407.

(b) You are not eligible for possible reimbursement if you participated in the administrative proceeding only on behalf of persons or entities that are ineligible.

§ 134.407 How do I know which eligibility requirement applies to me?

Follow this chart to determine your eligibility. You should calculate your net worth and the number of your employees as of the date the administrative proceeding was initiated.

If your participation in the proceeding was:	Eligibility requirements:
(1) As an individual rather than a business owner	(1) Personal net worth may not exceed 2 million dollars.
(2) As owner of an unincorporated business	(2) Personal net worth may not exceed 7 million dollars, and No more than 500 employees.
(3) As a partnership, corporation, association, organization, or unit of local government.	(3) Business net worth may not exceed 7 million dollars, and No more than 500 employees.
(4) As a charitable or other tax-exempt organization described in 26 U.S.C. 501(c)(3) or a cooperative association as defined in 12 U.S.C. 1141j(a).	(4) No net worth limitations, and No more than 500 employees.

§ 134.408 What are the special rules for calculating net worth and number of employees?

(a) Your net worth must include the value of any assets disposed of for the purpose of meeting an eligibility standard, and must exclude any obligation incurred for that purpose. Transfers of assets, or obligations incurred, for less than reasonably equivalent value will be presumed to have been made for the purpose of meeting an eligibility standard.

(b) If you are an owner of an unincorporated business, or a partnership, corporation, association, organization, or unit of local government, your net worth must include the net worth of all of your affiliates. ''Affiliates'' are:

(1) Corporations or other business entities which directly or indirectly own or control a majority of the voting shares or other ownership interests in the applicant concern; and

(2) Corporations or other business entities in which the applicant concern directly or indirectly owns or controls a majority of the voting shares or other ownership interests.

(c) Your employees include all those persons regularly working for you at the time the administrative proceeding was initiated, whether or not they were at work on that date. Part-time employees must be included on a proportional basis. You must include the employees of all your affiliates in your total number of employees.

§ 134.409 What is the difference between a fee and an expense?

A fee is a charge to you for the professional services of attorneys, agents, or expert witnesses rendered in connection with your case. An expense

is the cost to you of any study, analysis, engineering report, test, project, or similar matter prepared in connection with your case.

§ 134.410 Are there limitations on reimbursement for fees and expenses?

(a) Awards will be calculated on the basis of fees and expenses actually incurred. If services were provided by one or more of your employees, or were made available to you free, you may not seek an award for those services. If services were provided at a reduced rate, fees and expenses will be calculated at that reduced rate.

(b) In determining the reasonableness of the fees for attorneys, agents or expert witnesses, the ALJ will consider at least the following:

(1) That provider's customary fee for like services;

(2) The prevailing rate for similar services in the community in which that provider ordinarily performs services;

(3) The time actually spent in representing you; and

(4) The time reasonably spent in light of the difficulty and complexity of the issues.

(c) An award for the fees of an attorney or agent may not exceed $75 per hour, and an award for the fees of an expert witness may not exceed $25 per hour, regardless of the rate charged.

(d) An award for the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on your behalf may not exceed the prevailing rate payable for similar services, and you may be reimbursed only if the study or other matter was necessary to the preparation of your case.

§ 134.411 What should I include in my application for an award?

(a) Your application must be in the form of a written petition which is served and filed in accordance with § 134.204. It must contain the following information:

(1) A statement that OHA has jurisdiction over the case pursuant to § 134.102(g);

(2) Identification of the administrative proceeding for which you are seeking an award;

(3) A statement that you have prevailed, and a list of each issue in which you claim the position of SBA was not substantially justified;

(4) Your status as an individual, owner of an unincorporated business, partnership, corporation, association, organization, or unit of local government;

(5) Your net worth and number of employees as of the date the administrative proceeding was initiated, or a statement that one or both of these eligibility requirements do not apply to you;

(6) The amount of fees and expenses you are seeking, along with the invoice or billing statement from each service provider;

(7) A description of any affiliates (as that term is defined in § 134.408), or a statement that no affiliates exist;

(8) A statement that the application and any attached statements and exhibits are true and complete to the best of your knowledge and that you understand a false statement on these documents is a felony punishable by fine and imprisonment under 18 U.S.C. 1001; and

(9) (i) Your name and address;

(ii) Your signature, or the signature of either a responsible official or your attorney; and

(iii) The address and telephone number of the person who signs the application.

(b) You should follow this chart to determine which further documents must be included with your application:

Party	Required documents
(1) Individual, owner of unincorporated business, partnership, corporation, association, organization, or unit of local government.	(1) Net worth exhibit.
(2) Organization qualified as tax-exempt under 26 U.S.C. 501(c)(3)	(2) Copy of a ruling by the Internal Revenue Service that you qualify as a 501(c)(3) organization or Statement that you were listed in the current edition of IRS Bulletin 78 as of the date the administrative proceeding was initiated.
(3) Tax-exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status.	(3) Description of your organization and the basis for your belief you are exempt.
(4) Cooperative association as defined in 12 U.S.C. 1141j(a)	(4) Copy of your charter or articles of incorporation, and Copy of your bylaws.

§ 134.412 What must a net worth exhibit contain?

(a) A net worth exhibit may be in any format, but it must contain:

(1) List of all assets and liabilities for you and each affiliate in detail sufficient to show your eligibility;

(2) Aggregate net worth for you and all affiliates; and

(3) Description of any transfers of assets from, or obligations incurred by, you or your affiliates within one year prior to the initiation of the administrative proceeding which reduced your net worth below the eligibility ceiling, or a statement that no such transfers occurred.

(b) The net worth exhibit must be filed with your application, but will not be part of the public record of the proceeding. Further, in accordance with the provisions of § 134.204(g), you need not serve your net worth exhibit on other parties.

§ 134.413 What documentation do I need for fees and expenses?

You must submit a separate itemized statement or invoice for the services of each provider for which you seek reimbursement. Each separate statement or invoice must contain:

(a) The hours worked in connection with the proceeding by each provider supplying a billable service;

(b) A description of the specific services performed by each provider;

(c) The rate at which fees were computed for each provider;

(d) The total charged by the provider on that statement or invoice; and

(e) The provider's verification that the statement or invoice is true to the best of his or her knowledge and that he or she understands that a false statement is punishable by fine and imprisonment under 18 U.S.C. 1001.

§ 134.414 What deadlines apply to my application for an award and where do I send it?

After you have prevailed in an administrative proceeding or in a discrete issue therein, you must serve, and file with OHA, your written application for an award, and its attachments, no later than 30 days after the decision in the administrative proceeding becomes final under § 134.227. The deadline for filing an application for an award may not be extended. If SBA or another party requests review of the decision in the underlying administrative proceeding,

your request for an award for fees and expenses may still be filed, but it will not be considered by the ALJ until a final decision is rendered.

§ 134.415 How will proceedings relating to my application for fees and expenses be conducted?

Proceedings will be conducted in accordance with the provisions in subpart B of this part.

§ 134.416 How will I know if I receive an award?

The ALJ will issue an initial decision on the merits of your request for an award which will become final in 30 days unless a request for review is filed under § 134.228. The decision will include findings on your eligibility, on whether SBA's position was substantially justified, and on the reasonableness of the amount you requested. Where applicable, there will also be findings on whether you have unduly protracted the proceedings or whether other circumstances make an award unjust, and an explanation of the reason for the difference, if any, between the amount requested and the amount awarded. If you have sought an award against more than one federal agency, the decision will allocate responsibility for payment among the agencies with appropriate explanation.

§ 134.417 May I seek review of the ALJ's decision on my award?

You may request review of the ALJ's decision on your award by filing a request for review in accordance with § 134.228. You may seek judicial review of a final decision as provided in 5 U.S.C. 504(c)(2).

§ 134.418 How are awards paid?

If you are seeking payment of an award, you must submit a copy of the final decision, along with your certification that you are not seeking judicial review of either the decision in the adversary adjudication, or of the award, to the following address: Chief Financial Officer, Office of Financial Operations, SBA, P.O. Box 205, Denver, CO 80201–0205. SBA will pay you the amount awarded within 60 days of receipt of your request unless it is notified that you or another party has sought judicial review of the underlying decision or the award.

PART 132—[REMOVED]

2. Part 132 is hereby removed.

PARTS 112, 113, 124, and 136—[AMENDED]

3. In accordance with the list below, for each section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add in its place the reference in the right column:

Section	Remove	Add
112.11(b)	134.34	134.228
112.11(b)	134.19	134.222
112.11(b)	134.21	134.211
112.11(c)	134.32(b)	134.227(b)
113.7(b)	134.34	134.228
113.7(b)	134.19	134.222
113.7(b)	134.21	134.211
113.7(c)	134.32(b)	134.227(b)
124.210(b)	134.11(a)	134.203(a)
124.210(d)(2)	134.12	134.202
124.211(g)	134.19	134.222
136.170(j)(2) ..	134.34(a)	134.228(a)
136.170(j)(2) ..	134.34(b)	134.228(a)
136.170(j)(2) ..	134.32(b)(3) ..	134.227(b)

Philip Lader,

Administrator.

[FR Doc. 96–1158 Filed 1–26–96; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This rule renumbers, reorganizes, condenses and rewrites in plain language the existing regulation implementing the ''Program Fraud Civil Remedies Act of 1986''. The goal of the plain language style is to eliminate redundancies, ambiguities and cumbersome wording. The goal of the reorganization and revision is to make this part consistent in practice and procedure with other parts of this title and to clarify requirements under this regulation and applicable statutes of the United States.

EFFECTIVE DATE: This rule is effective February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Cheri Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to each federal agency, directing them to simplify their regulations. In response to this directive, SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This rule reorganizes and rewords former provisions for clarity and user-friendliness. Extensive renumbering was necessary for reorganization, simplification and clarification of existing provisions. No substantive changes to existing provisions were made.

SBA published its proposed changes to Part 142 in the Federal Register on November 27, 1995 (60 FR 58297), inviting the public to comment during a thirty day comment period. Since no comments were received, SBA has decided to issue the final rule substantially as proposed (subject only to minor typographical corrections).

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule renumbers, reorganizes and rewrites the existing regulation for clarity and ease of use. Contracting opportunities and financial assistance for small business are not affected by this rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

For the above reasons, SBA revises Part 142 of Title 13 of the Code of Federal Regulations to read as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Overview and Definitions

142.1 Overview of regulations.

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

Overview and Definitions

§ 142.1 Overview of regulations.

(a) *Statutory basis.* This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (''the Act''). The Act provides SBA and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this part.

(b) *Possible remedies for program fraud.* In addition to any other penalty which may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by SBA. If SBA has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by SBA because of the false claim.

§ 142.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to SBA is subject to program fraud enforcement. A ''person'' means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced SBA to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several, that is, each is responsible for the entire amount.

(c) No proof of specific intent to defraud is required to establish liability under this part.

§ 142.3 What is a claim?

(a) Claim means any request, demand, or submission:

(1) Made to SBA for property, services, or money;

(2) Made to a recipient of property, services, or money from SBA or to a party to a contract with SBA for property or services, or for the payment of money. This provision applies only when the claim is related to the property, services or money from SBA or to the contract with SBA; or

(3) Made to SBA which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes SBA guaranteed loans made by participating lenders. A claim is made when it is received by SBA, an agent, fiscal intermediary, or other entity acting for SBA, or when it is received by the recipient of property, services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 142.4 What is a statement?

A ''statement'' means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. ''From SBA'' means that SBA provides some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

§ 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a ''false'' claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty

to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 142.6 What does the phrase ''know or have reason to know'' mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Procedures Leading to Issuance of a Complaint

§ 142.7 Who investigates program fraud?

The Inspector General, or his designee, is responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in Part 101 of this chapter.

§ 142.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

(1) The reasons for the referral;

(2) The claims or statements upon which liability would be based;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) The likelihood of collecting the proposed penalties and assessments.

(b) If at any time, the Attorney General or designee requests in writing that this administrative process be stayed, the Administrator must stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 142.9 When will SBA issue a complaint?

SBA will issue a complaint:

(a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

§ 142.10 What is contained in a complaint?

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to SBA is referred to as the ''defendant.''

(b) The reviewing official may join in a single complaint false claims or statements that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that SBA seeks to impose civil penalties, assessments, or both, against each defendant and will include:

(1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which each defendant may be held liable;

(3) A statement that each defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer;

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve any complaint on the defendant and provide a copy to the Office of Hearings and Appeals (OHA). If a hearing is requested, an Administrative Law Judge (ALJ) from OHA will serve as the Presiding Officer.

§ 142.11 How will the complaint be served?

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

(1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence, usual dwelling place, principal office or place of business; or by

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) Proof of service—

(1) When service is made by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of receipt by the defendant or a representative, will serve as proof of service.

(e) When served with the complaint, the defendant also should be served with a copy of this part 142 and 31 U.S.C. 3801–3812.

Procedures Following Service of a Complaint

§ 142.12 How does a defendant respond to the complaint?

(a) A defendant may file an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the

complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with OHA and a copy must be served on the reviewing official.

§ 142.13 What happens if a defendant fails to file an answer?

(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official will refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and describing the extraordinary circumstances that prevented the defendant from filing an answer, the initial decision will be stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

§ 142.14 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file concurrently, the complaint and the answer with the ALJ, along with a designation of an SBA representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of oral hearing upon the defendant and the representative for SBA, in the same manner as the complaint, service of which is described in § 142.11. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for SBA; and

(6) Such other matters as the ALJ deems appropriate.

Hearing Provisions

§ 142.15 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

§ 142.16 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and SBA. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.17 What is the role of the ALJ?

An ALJ from OHA serves as the Presiding Officer at all hearings, with authority as set forth in § 134.218(b) of this chapter.

§ 142.18 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 142.19 How are issues brought to the attention of the ALJ?

All applications to the ALJ for an order or ruling are made by motion, stating the relief sought, the authority relied upon, and the facts alleged. Procedures for filing motions under this section are governed by § 134.211 of this chapter.

§ 142.20 How are papers served?

Except for service of a complaint or a notice of hearing under § 142.11 and § 142.14(b) respectively, service of papers must be made as prescribed by § 134.204 of this chapter.

§ 142.21 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty and/or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) SBA must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.22 How is evidence presented at the hearing?

(a) Witnesses at the hearing must testify orally under oath or affirmation unless otherwise ordered by the ALJ. At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition, a copy of which must be provided to all other parties, along with the last known address of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

(b) The ALJ determines the admissibility of evidence in accordance with § 134.223 (a) and (b) of this chapter.

§ 142.23 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying SBA a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term ''information'' does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by § 134.213 of this chapter.

§ 142.24 Can witnesses be subpoenaed?

A party seeking the appearance and testimony of any individual or the production of documents or records at a hearing may request in writing that the ALJ issue a subpoena. Any such request must be filed with the ALJ not less than 15 days before the scheduled hearing date unless otherwise allowed by the ALJ for good cause. A subpoena shall be issued by the ALJ in the manner specified by § 134.214 of this chapter.

§ 142.25 Can a party or witness object to discovery?

Any party or prospective witness may file a motion to quash a subpoena or to limit discovery or the disclosure of evidence. Motions to limit discovery or to object to the disclosure of evidence are governed by § 134.213 of this chapter. Motions to limit or quash subpoenas are governed by § 134.214(d) of this chapter.

§ 142.26 Can a party informally discuss the case with the ALJ?

No. Such discussions are forbidden as ex parte communications with the ALJ as set forth in § 134.220 of this chapter. This does not prohibit a party from communicating with other employees of OHA to inquire about the status of a case or to ask routine questions concerning administrative functions and procedures.

§ 142.27 Are there sanctions for misconduct?

The ALJ may sanction a party or representative, as set forth in § 134.219 of this chapter.

§ 142.28 Where is the hearing held?

The ALJ will hold the hearing in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made, presented or submitted to SBA; or

(c) As agreed upon by the defendant and the ALJ.

§ 142.29 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

Decisions and Appeals

§ 142.30 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after close of the hearing or expiration of any allowed time for submission of post-hearing briefs. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay and set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator.

§ 142.31 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) Any response to a motion for reconsideration must be filed within 20 days of receipt of such motion.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 142.32 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of SBA, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the SBA Administrator, as set forth in § 142.33.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of SBA 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the Administrator, within 30 days of the ALJ's order, as set forth in § 142.33.

§ 142.33 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the Administrator within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The Administrator may extend this deadline for up to thirty additional days if an extension request is filed within the initial 30 day period and shows good cause.

(c) The defendant's appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) SBA's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ will forward the record of the proceeding to the Administrator.

§ 142.34 Are there any limitations on the right to appeal to the Administrator?

(a) A defendant has no right to appear personally, or through a representative, before the Administrator.

(b) There is no right to appeal any interlocutory ruling.

(c) The Administrator will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the Administrator that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the Administrator may remand the matter to the ALJ for consideration of the additional evidence.

§ 142.35 How does the Administrator dispose of an appeal?

(a) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The Administrator will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 142.36 Can I obtain judicial review?

If the initial decision is appealed, the decision of the Administrator is the final decision of SBA and is not subject to judicial review unless the defendant files a petition for judicial review within 60 days after the Administrator serves the defendant with a copy of the final decision.

§ 142.37 What judicial review is available?

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final SBA decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition in a timely fashion.

§ 142.38 Can the administrative complaint be settled voluntarily? (a)

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator or the Attorney General, as appropriate.

§ 142.39 How are civil penalties and assessments collected?

31 U.S.C. 3806 and 3808(b) authorize the Attorney General to bring specific actions for collection of such civil penalties and assessments including administrative offset under 31 U.S.C. 3716. The penalties and assessments may not, however, be administratively offset against an overpayment of federal taxes (then or later owed) to the defendant by the United States.

§ 142.40 What if the investigation indicates criminal misconduct?

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this part limits the requirement that SBA employees report suspected violations of criminal law to the SBA Office of Inspector General or to the Attorney General.

§ 142.41 How does SBA protect the rights of defendants?

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority in accordance with 31 U.S.C. 3801. Except for purposes of settlement, or as a witness or a representative in public proceedings, no investigating official, reviewing official, or SBA employee or agent who helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the Administrator.

This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for SBA may be employed in the offices of either the investigating official or the reviewing official.

Dated: January 22, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–1349 Filed 1–26 –96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–03–AD; Amendment 39–9491; AD 96–01–52]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T96–01–52 that was sent previously to all known U.S. owners and operators of Airbus Model A310 and A300–600 series airplanes by individual telegrams. Among other things, this AD requires repetitive inspections to ensure correct synchronization of the hydraulic control valves of the trimmable horizontal stabilizer (THS) actuator; replacement of the horizontal stabilizer actuator motors with new or serviceable motors and resynchronization of the valves, or adjustment of the synchronization, if necessary; and a functional test of the THS. This amendment is prompted by a report of desynchronization of the hydraulic control valves that direct fluid to the horizontal stabilizer actuator motors, which resulted in uncommanded movement of the THS. The actions specified by this AD are intended to prevent such desynchronization, which could lead to runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and potential pitch upset.

DATES: Effective February 5, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–01–52, issued January 9, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.96–NM–03–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1503; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that it recently received a report indicating that uncommanded movement of the trimmable horizontal stabilizer (THS) occurred on a Model A310 series airplane after the engine was started while the airplane was on the ground. Both pitch trim levers and the autopilot (AP) 1 tripped; additionally, the servo control push button (P/B) of one of the hydraulic systems illuminated. The servo control P/B was reset successfully following engagement of the pitch trim and AP1.

The crew attempted to command the pitch trim by using one of the rocking switches; however, the pitch trim and AP1 tripped again. Then, without further action on the part of the crew, the pitch trim control wheel moved to a position of 14 degrees up (end of travel).

During subsequent bench testing of the motor on one of the hydraulic systems of the airplane, the positioning pin on the cam plate was found to be broken. This pin is not designed to carry loads. The shape of the pin hole indicated that the pin was bent and ruptured.

Further investigation revealed that the pin rupture was caused by desynchronization of the hydraulic control valves that direct fluid to the horizontal stabilizer actuator (HSA) motors. Desynchronization of the hydraulic control valves can result in one hydraulic motor being pressurized before the other. In this case, the nonpressurized motor opposes the torque of the motor that is pressurized first, which causes load to be applied to the positioning pin of the nonpressurized motor. Consequently, the pin can rupture due to fatigue. Such rupturing of the positioning pin of one motor can result in jamming of the THS actuator and can contribute to subsequent failure of the hydraulic system of the other motor.

These conditions, if not corrected, could result in runaway of the horizontal stabilizer to its full up or down position, and subsequent reduced maneuvering capability and a potential pitch upset.

The horizontal stabilizer actuator installed on Model A310 series airplanes is similar in design to the one installed on Model A300–600 series airplanes. Therefore, the FAA finds that Model A300–600 series airplanes are subject to the same unsafe condition identified in the Model A310.

Airbus has issued All Operators Telex (AOT) 27–21, Revision 1, dated January 5, 1996, which describes procedures for repetitive inspections to ensure correct synchronization of the hydraulic control valves of the THS actuators; replacement of the hydraulic motors with new or serviceable motors and resynchronization of the valves, or adjustment of the synchronization, if necessary; and a functional test of the THS.

For airplanes on which the hydraulic motor or hydraulic valve block of the HSA has been subject to previous maintenance action, the AOT also describes procedures for replacement of both hydraulic motors of the HSA with new or serviceable motors.

In lieu of replacing the motors, the AOT also describes procedures for removal of the hydraulic motors of the HSA, accomplishment of various follow-on actions, and repair of any discrepancy found. (The follow-on actions include checking the motors and the cam seats, assembling the motors, and metal stamping the modification plate of the motors.)

Additionally, the AOT describes procedures for eventual removal of certain motors for inspection to detect any wear or damage caused by desynchronization; and, if necessary, either replacement of the motors with

new or serviceable motors, or removal of the motors, accomplishment of various follow-on actions, and repair of any discrepancy found.

The DGAC classified this AOT as mandatory in order to assure the continued airworthiness of these airplanes in France.

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

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T96–01–52 to prevent runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and a potential pitch upset. The AD requires repetitive inspections to ensure correct synchronization of the hydraulic control valves of the THS actuator; replacement of the motors with new or serviceable motors, and resynchronization of the valves or adjustment of the synchronization, if necessary; and a functional test of the THS.

In addition, for airplanes on which the hydraulic motor or hydraulic valve block of the HSA has been subject to previous maintenance action, this AD requires replacement of both hydraulic motors of the HSA with new or serviceable motors. If an operator considers that such maintenance action would not have affected the synchronization of the valves, the operator may seek approval of an alternative method of compliance with the AD, in accordance with paragraph (c) of this AD.

In lieu of replacing the hydraulic motors, this AD provides for removal of the motors, accomplishment of various follow-on actions, and repair of any discrepancy found.

The actions are required to be accomplished in accordance with the AOT described previously.

Operators should note that the Airbus AOT recommends that, within one year, certain hydraulic motors be removed and inspected for wear or damage caused by desynchronization. However, this AD does not require such action. The FAA may consider additional rulemaking to require the removal and inspection of the motors, but has determined that the repetitive inspections to ensure correct synchronization of the hydraulic control valves will maintain an adequate level of safety in the fleet in the meantime.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 9, 1996, to all known U.S. owners and operators of Airbus Model A310 and A300–600 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–03–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–01–52 Airbus: Amendment 39–9491. Docket 96–NM–03–AD.

Applicability: Model A310 and A300–600 series airplanes; equipped with a trimmable horizontal stabilizer (THS) actuator having

part number (P/N) 47142–201 or P/N 47142–203; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent runaway of the horizontal stabilizer to its full up or down position, subsequent reduced maneuvering capability, and a potential pitch upset, accomplish the following:

(a) Within 12 days after the effective date of this AD, perform an inspection to ensure correct synchronization of the hydraulic control valves of the trimmable horizontal stabilizer (THS) actuator, in accordance with paragraph 4.2.2.1 of Airbus All Operators Telex (AOT) 27–21, Revision 1, dated January 5, 1996.

(1) If the actuator is synchronized correctly, prior to further flight, perform a functional test of the THS in accordance with paragraph 4.2.2.1 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(2) If the actuator is desynchronized slightly, as specified in the AOT, prior to further flight, adjust the synchronization, and perform a functional test of the THS, in accordance with paragraph 4.2.2.2 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(3) If the actuator is desynchronized significantly, as specified in the AOT, prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD. Prior to further flight following the accomplishment of either of those paragraphs, adjust the synchronization, and perform a functional test of the THS, in accordance with paragraph 4.2.2.3 of the AOT. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

(i) Remove and replace the hydraulic motors of the horizontal stabilizer actuator (HSA) with new or serviceable motors in accordance with procedures specified in the Airplane Maintenance Manual. Or

(ii) Remove the hydraulic motors of the HSA and perform the various follow-on actions specified in paragraph 4.2.2.4 of the AOT, in accordance with that paragraph. (The follow-on actions include checking the motors and the cam seats, assembling the motors, and metal stamping the modification plate of the motors.) If any discrepancy is found during the check, prior to further flight, repair in accordance with paragraph 4.2.2.4 of the AOT.

(b) For airplanes on which any maintenance action relating to a hydraulic motor or a hydraulic valve block of the HSA has occurred since the airplane was new: Within 12 days after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace both hydraulic motors of the HSA with new or serviceable motors in accordance with the procedures specified in the Airplane Maintenance Manual. Adjust the synchronization, and perform a functional test of the THS in accordance with paragraph 4.2.2.3 of Airbus AOT 27–21, Revision 1, dated January 5, 1996. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service. Or

(2) Remove the hydraulic motors of the HSA and perform the various follow-on actions specified in paragraph 4.2.2.4 of the AOT, in accordance with that paragraph of the AOT. Adjust the synchronization, and perform a functional test of the THS in accordance with paragraph 4.2.2.3 of the AOT. (The follow-on actions include checking the motors and the cam seats, assembling the motors, and metal stamping the modification plate of the motors.) If any discrepancy is found during the check, prior to further flight, repair in accordance with paragraph 4.2.2.4 of the AOT. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD at intervals not to exceed 500 hours time-in-service.

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

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

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

(e) The actions shall be done in accordance with Airbus All Operators Telex (AOT) 27–21, Revision 1, dated January 5, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 5, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–01–52, issued January 9, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 12, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–591 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–270–AD; Amendment 39–9495; AD 95–26–15]

Airworthiness Directives; Allied Signal Commercial Avionics Systems CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) as Installed in, but Not Limited to, Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting an airworthiness directive that was sent previously by individual letters to all known U.S. owners and operators of various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 TCAS. This amendment is prompted by reports of failure of the audio output of the CAS–81 TCAS. This AD requires a revision to the Airplane Flight Manual to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. The actions specified by this AD are intended to ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it.

DATES: Effective February 5, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–270–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

This information concerning this amendment may be obtained from or

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, Suite 2–160, 1701 Columbia Avenue, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: David Gollings, Flight Test Pilot, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Campus Building, Suite 2–160, 1701 Columbia Avenue, College Park, Georgia 30337–2748; telephone (404) 305–7370; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On December 26, 1995, the FAA issued priority letter AD 95–26–15, applicable to Allied Signal Commercial Avionics Systems CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) that are installed in, but not limited to, various transport category airplanes. That action requires a revision to the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus, and to perform a TCAS functional test to verify proper operation of the TCAS. That action was prompted by reports of failure of the audio output of the CAS–81 TCAS.

During bench testing, the parts manufacturer identified a capacitor in the audio output circuit that continued to build charge as long as the system was powered. The capacitor biases the audio circuit and causes failure of the audio output. The absence of audio output can occur after the TCAS has been powered without interruption for approximately 12 hours. Power interrupts (intentional or unintentional) tend to relieve the failure condition by causing the capacitor to discharge. This condition, if not corrected, could result in a critical reduction of the reliability of the CAS–81 TCAS to perform its collision avoidance function.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued priority letter AD 95–26–15 to ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it. The AD requires a revision to the AFM to provide the flightcrew with procedures to cycle power to the TCAS processor via the circuit breaker or power bus prior to the first flight of the day, prior to the accumulation of 10 hours of uninterrupted power, and at the mid-point of any one flight scheduled to exceed 10 hours. Additionally, the AD requires that, prior to taxi before takeoff, a functional test must be accomplished to verify proper operation of the TCAS.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 26, 1995, to all known U.S. owners and operators of various transport category airplanes equipped with Allied Signal Commercial Avionics Systems CAS–81 TCAS. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–270–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–26–15 Allied Signal Commercial Avionics Systems: Amendment 39–9495 Docket 95–NM–270–AD.

Applicability: All CAS–81 Traffic Alert and Collision Avoidance Systems (TCAS) that are installed in, but not limited to, the following airplanes, certificated in any category:

Aerospatiale Models ATR42 and ATR72 series airplanes;
Airbus Industries Models A300, A310, and A340 series airplanes;
Beech Models 1900 and BE–65 through -90 (inclusive) series airplanes;
Boeing Models 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 series airplanes;
Convair Model CV–580 airplanes;
de Havilland Model DHC–7 series airplanes and Model DHC–8–100 airplanes;
EMBRAER Model EMB–120 series airplanes;
Fairchild Model F227 airplanes;
Fokker Models F28 Mark 100, Mark 1000, and Mark 4000 series airplanes;
General Dynamics Models Convair 340 and 440 airplanes;
Gulfstream Models G–159 and G-IV airplanes;
Lockheed Model L–1011 series airplanes;
McDonnell Douglas Models DC–8–60, DC–9–31, DC–9–51, DC–10–10, DC–10–30, DC–10–30F, MD–11, and MD–80 series airplanes;
Rockwell International NA–265–65 airplanes;
Saab Model 340 series airplanes; and
Shorts Model 360 series airplanes.

Note 1: This AD applies to, but is not limited to, each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any affected airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the potential hazard associated with failure of the audio output of the CAS–81 TCAS, and of the procedures necessary to address it, accomplish the following:

(a) Within 3 calendar days after receipt of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''In order to ensure that the audio output of the CAS–81 TCAS operates properly, accomplish the following:

- Prior to the first flight of the day; prior to the accumulation of 10 hours of uninterrupted power; and at the mid-point of any one flight scheduled to exceed 10 hours: Cycle the power to the TCAS processor via the circuit breaker or power bus.
- Prior to taxi before takeoff: Initiate the TCAS functional test in accordance with AFM procedures to verify operational condition of the CAS–81 TCAS.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Atlanta Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(d) This amendment becomes effective on February 5, 1996.

Issued in Renton, Washington, on January 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1571 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–36; Amendment 39–9471; AD 94–11–10]

Airworthiness Directives; Curtiss-Wright R1820 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 94–11–10 that was sent previously to certain U.S. owners and operators of Curtiss-Wright R1820 series reciprocating engines, installed on the following U.S. registered aircraft: N313WB, N7044L, N815SH, and N83AW by individual letters. This AD requires engines certified to operate on 91 octane or higher avgas to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. This amendment is prompted by reports that aircraft with certain Curtiss-Wright engines installed were fueled with a contaminated fuel mixture between May 22 and June 2, 1994, at Sacramento Executive (SAC) airport, or between May 18 and June 2, 1994, at Sacramento Metro (SMF) airport. The actions specified by this AD are intended to prevent detonation due to low octane, which can result in severe engine damage and subsequent failure.

DATES: Effective February 13, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–11–10, issued on June 23, 1994, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–36, 12 New England Executive Park, Burlington, MA 01803–5299.

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

SUPPLEMENTARY INFORMATION: On June 23, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–11–10, applicable to Curtiss-Wright R1820 series reciprocating engines, installed on the following U.S. registered aircraft: N313WB, N7044L, N815SH, and N83AW, which requires teardown and analytical inspection for engines certified to operate on 91 or higher octane aviation gasoline (avgas), and differential compression test and examination of the oil filter for engines certified to operate on 80 octane avgas. That action was prompted by reports of reports of aviation gasoline (avgas) being contaminated by Jet A fuel. After investigation, the source of the contamination has been determined to be the refiner of the avgas. Through its distribution system, the refiner inadvertently caused Jet A fuel to be loaded into distribution tanks intended for avgas. Contaminated avgas from these distribution tanks was then shipped to local fuel distributors. The FAA has determined that aircraft with certain Franklin engines installed were fueled with this contaminated mixture between May 22 and June 2, 1994, at

Sacramento Executive (SAC) airport, or between May 18 and June 2, 1994, at Sacramento Metro (SMF) airport. The list of U.S. registered aircraft specified in the applicability paragraph of this AD is based on investigation of fueling records secured from the two affected airports, which the FAA has determined to represent the population of affected engines. This condition, if not corrected, could result in detonation due to low octane, which can result in severe engine damage and subsequent failure.

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

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 94–11–10 to prevent detonation due to low octane. The AD requires teardown and analytical inspection for engines certified to operate on 91 or higher octane avgas, and differential compression test and examination of the oil filter for engines certified to operate on 80 octane avgas.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 23, 1994, to certain U.S. owners and operators of Curtiss-Wright R1820 series reciprocating engines, installed on the following U.S. registered aircraft: N313WB, N7044L, N815SH, and N83AW. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–36.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–11–10 Curtiss-Wright: Amendment 39–9471. Docket 94–ANE–36.

Applicability: Curtiss-Wright R1820 series reciprocating engines, installed on the following U.S. registered aircraft: N313WB, N7044L, N815SH, and N83AW.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to

address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

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

(a) For engines that are certified to operate on only 91 or higher octane aviation gasoline (avgas) within the next 2 hours time in service (TIS) after the effective date of this airworthiness directive (AD) perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with the applicable overhaul manuals.

(b) For engines that are certified to operate on 80 octane avgas, within the next 2 hours TIS after the effective date of this AD conduct a differential compression test on all cylinders in accordance with the applicable maintenance manuals, and examine the oil filter by cutting the oil filter apart and spreading the filter paper out to look for metal particles. If metal particles are present, or if one or more cylinders shows unacceptable compression as specified in the applicable maintenance manuals, perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with the applicable overhaul manuals.

Note: Additional guidance for conducting differential compression tests is contained in paragraph 692 of Advisory Circular (AC) No. 43.13–1A, dated 1988.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine and Propeller Standards Staff. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine and Propeller Standards Staff.

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

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

(e) This amendment becomes effective February 13, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 94–11–10, issued June 23, 1994, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on January 11, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–1411 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–70; Amendment 39–9489, AD 96–02–04]

Airworthiness Directives; Franklin Model 6A4–150–B3 and 6A4–165–B3 Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Franklin Model 6A4–150–B3 and 6A4–165–B3 reciprocating engines, installed on the following U.S. registered aircraft: N6209M, N74231, and N752C. This action supersedes priority letter AD 94–14–11 that currently requires engines certified to operate on 91 octane or higher avgas to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. This action revises incorrect engine model numbers listed in the priority letter AD. This amendment is prompted by updated information that has identified the correct engine model numbers. The actions specified by this AD are intended to prevent detonation due to low octane, which can result in severe engine damage and subsequent failure.

DATES: Effective February 13, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–70, 12 New England Executive Park, Burlington, MA 01803–5299.

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

SUPPLEMENTARY INFORMATION: On June 23, 1994, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 94–14–11, applicable to Franklin Model 6A4–150–B3 and 6A4–165–B3 reciprocating engines, installed on the following U.S. registered aircraft: N6209M, N74231, and N752C. That action requires teardown and analytical inspection for engines certified to operate on 91 or higher octane aviation gasoline (avgas), and differential compression test and examination of the oil filter for engines certified to operate on 80 octane avgas. That action was prompted by reports of reports of aviation gasoline (avgas) being contaminated by Jet A fuel. After investigation, the source of the contamination has been determined to be the refiner of the avgas. Through its distribution system, the refiner inadvertently caused Jet A fuel to be loaded into distribution tanks intended for avgas. Contaminated avgas from these distribution tanks was then shipped to local fuel distributors. The FAA has determined that aircraft with certain Franklin engines installed were fueled with this contaminated mixture between May 22 and June 2, 1994, at Sacramento Executive (SAC) airport, or between May 18 and June 2, 1994, at Sacramento Metro (SMF) airport. The list of U.S. registered aircraft specified in the applicability paragraph of this AD is based on investigation of fueling records secured from the two affected airports, which the FAA has determined to represent the population of affected engines. That condition, if not corrected, could result in detonation due to low octane, which can result in severe engine damage and subsequent failure.

This AD requires engines certified to operate on 91 octane or higher avgas to undergo a teardown and analytical inspection for detonation damage, and engines certified to operate on 80 octane avgas to undergo inspection for evidence of possible internal engine damage. Engineering analysis of operating these engines with avgas contaminated with Jet A fuel indicates that actual damage to the engine may range from unnoticeable to very severe, according to the duration of run, engine power level, and level of contamination. Damage may be characterized by increased operating temperatures resulting in damaged intake valves and burned pistons, and excessive loads imposed by detonation. Since internal damage may not be assessed by any other method, engines certified to operate on 91 octane or higher avgas must undergo a teardown and analytical inspection and any parts showing signs of detonation damage must be replaced.

Investigation revealed the lowest octane level of the contaminated fuel to be 83 octane, therefore engines certified to operate on 80 octane avgas need not undergo a teardown and analytical inspection unless evidence of internal engine damage is present by the required differential compression test and examination of the oil filter for metal particles. The refiner has advised the FAA that it may pay for any reasonable expense associated with the inspection and/or disassembly in accordance with the mechanic's and manufacturer's recommendations.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 94–14–11 to revise incorrect engine model numbers listed in the priority letter AD.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–70.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–02–04 Franklin: Amendment 39–9489. Docket No. 95–ANE–70. Supersedes AD 94–14–11.

Applicability: Franklin Model 6A4–150–B3 and 6A4–165–B3 reciprocating engines, installed on the following U.S. registered aircraft: N6209M, N74231, and N752C.

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

Compliance: Required as indicated, unless accomplished previously. detonation due to low octane, which can result in severe engine damage and subsequent failure, accomplish the following:

(a) For engines that are certified to operate on only 91 or higher octane aviation gasoline (avgas) within the next 2 hours time in service (TIS) after the effective date of this airworthiness directive (AD) perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with the applicable overhaul manuals.

(b) For engines that are certified to operate on 80 octane avgas, within the next 2 hours TIS after the effective date of this AD conduct a differential compression test on all cylinders in accordance with the applicable maintenance manuals, and examine the oil filter by cutting the oil filter apart and spreading the filter paper out to look for metal particles. If metal particles are present, or if one or more cylinders shows unacceptable compression as specified in the applicable maintenance manuals, perform an engine teardown and analytical inspection, and replace with serviceable parts as necessary in accordance with the applicable overhaul manuals.

Note: Additional guidance for conducting differential compression tests is contained in paragraph 692 of Advisory Circular (AC) No. 43.13–1A, dated 1988.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine and Propeller Standards Staff. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine and Propeller Standards Staff.

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment supersedes priority letter AD 94–11–11, issued June 23, 1994.

(f) This amendment becomes effective on February 13, 1996.

Issued in Burlington, Massachusetts, on January 11, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–1410 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–19–AD; Amendment 39–9501; AD 96–03–04]

Airworthiness Directives; General Dynamics (Convair) Model 240 Series Airplanes, Including Model T–29 (Military) Airplanes; Model 340 and 440 Series Airplanes; and Model C–131 (Military) Airplanes; Including Those Modified for Turbo-Propeller Power

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various General Dynamics (Convair) airplanes, that requires revising the Airplane Flight Manual to require that the flight crew limit the flap settings during certain icing conditions and air temperatures. This amendment is prompted by reports indicating that incidents involving uncommanded pitch excursions have occurred due to ice contaminated tailplane stall (ICTS) that occurred during or following flight in icing conditions. If flap settings are increased for landing when conditions for ICT S are present, elevator control could be affected adversely and the airplane could descend uncontrollably. The actions specified by this AD are intended to ensure that the flight crew is advised of the potential hazard related to increasing the flap settings when conditions for ICTS are present, and the procedures necessary to address it.

EFFECTIVE DATE: February 28, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various General Dynamics (Convair) airplanes was published in the Federal Register on June 16, 1995 (60 FR 31648). That action proposed to require revising the FAA-approved Airplane Flight Manual (AFM) to require that the flight crew limit the flap settings during certain icing conditions and air temperatures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter supports the proposed rule, but believes that an allowance should be made for using a setting of greater than flaps 30 after icing conditions have been encountered if outside air temperatures in the landing area are well above freezing. The commenter indicates that icing conditions may be encountered at cruising altitudes, but the ground temperatures could be much warmer. The commenter believes that there is virtually no chance that ice would remain on the tail. From the commenter's experience, all ice that has collected on the wing leading edges, engine nacelles, windscreens, and windshield wipers will have disappeared by the time the indicating outside air temperature has reached +5 degrees Celsius on descent.

In light of these remarks, the commenter suggests that the AFM revision required by paragraph (a) of the proposed rule be reworded as follows:

''Flap selection is limited to a maximum of 30 degrees after icing conditions have been encountered if the indicated OAT on approach is +5 degrees Celsius or lower; or if icing conditions are anticipated during approach and landing; or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present.''

The FAA does not concur with the commenter's suggestion. Operators cannot generally assume that accreted ice will not be present on wings and tailplanes if the outside air temperatures are above +5 degrees Celsius on approach. Ice sublimation, melting, and shedding are not only functions of temperature, but also are dependent upon other factors such as the nature, size, and extent of ice accretion; operation of ice protection systems; time of flight in temperatures above freezing; and airplane speed.

The commenter's concern regarding incurring a flap extension limitation after encountering, and then departing, icing conditions has merit. However, the airplane must be free of ice before the flaps are extended to greater than 30 degrees. Since ice can accrete on tailplanes with a small leading edge radius when there is no evidence of ice accretion on the wings, a method of visual inspection of the wings, tailplanes, and/or proven ice detectors or ice evidence probes would be necessary to assure clean surfaces.

One commenter requests that the proposed AD be withdrawn. The commenter states that the airplane can be operated quite safely within the environment to which it is certified when the anti-icing system is operational and functioning, and when that system is used in the manner in which it was intended.

The FAA does not concur with the commenter's request. Test pilots of Convair Model 5800 series airplanes actually experienced evidence of ice contaminated tailplane stall (ICTS) during pushover maneuver flight tests. (Model 5800 series airplanes are similar to Model 340 series airplanes equipped with turbo-prop engines.) For this reason the type certificate holder agreed with the FAA that a flap extension restriction during operation in icing conditions is necessary. The specific flight test used to determine susceptibility to ICTS is a pushover maneuver to generate an increased angle of attack on the horizontal tailplane. This maneuver is performed with ice shapes on the tailplane and flaps in approach and landing positions, at speeds from near approach to maximum for the configurations. The test procedure requires a push force throughout the maneuver to zero load factor. A force reversal would be indicative of an elevator hinge moment reversal caused by airflow separation due to accreted ice and an increased angle of attack due to pitch rate, and would define the aircraft as susceptible to ICTS. Because all affected Convair airplane models have tailplane designs that are similar to the model tested, this AD requires a flap limitation.

The FAA has revised this final rule to clarify that the unsafe condition

specified in this AD can occur if the flap settings are increased when conditions for ICTS are present.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 282 Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; Model C–131 (military) airplanes, and those models modified for turbo-propeller power; of the affected design in the worldwide fleet. The FAA estimates that 197 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,820, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–03–04 General Dynamics (Convair): Amendment 39–9501. Docket 95–NM–19–AD.

Applicability: All Model 240 series airplanes, including Model T–29 (military) airplanes; Model 340 and 440 series airplanes; and Model C–131 (military) airplanes; including those models modified for turbo-propeller power (commonly referred to as Model 580, 600, and 640 series airplanes); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with increasing the flap settings when ice contaminated tailplane stall (ICTS) conditions are present, and the procedures necessary to address it, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will limit the flap settings during certain icing conditions and air temperatures. This may be accomplished by inserting a copy of this AD in the AFM.

''FLAP LIMITATION IN ICING CONDITIONS

Flap selection is limited to a maximum of 30 degrees after icing conditions have been encountered; or when icing conditions are anticipated during approach and landing; or when the outside air temperature is +5 degrees Celsius or below and any visible moisture is present.''

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

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

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

(d) This amendment becomes effective on February 28, 1996.

Issued in Renton, Washington, on January 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1517 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–88–AD; Amendment 39–9500; AD 95–24–10]

Airworthiness Directives; Michelin Aircraft Tire Corporation Part Number 028–520–1 (22x5.75–12/10PR) Tires Installed on the Main Landing Gear of Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 95–24–10, which was sent previously to all known U.S. owners and operators of airplanes with a Michelin Aircraft Tire Corporation part number (P/N) 028–520–1 (22x5.75–12/10PR) tire installed on the main landing gear. This AD requires replacing any of the affected tires with an FAA-approved tire. Two reports of failure (rupture) of the main landing gear tire during landing operations on Cessna Citation VII airplanes prompted priority letter AD 95–24–10. The actions specified by this AD are intended to prevent loss of control of the airplane during landing operations because of failure of a P/N 028–520–1 (22x5.75–12/10PR) tire.

DATES: Effective February 21, 1996, to all persons except those to whom it was made immediately effective by priority letter AD 95–24–10, issued November 21, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–88–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Bosonetto, Aerospace Engineer,

FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7379; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: The FAA has received two reports of failure (rupture) of the main landing gear tire during landing operations on Cessna Citation VII airplanes. Analysis of these incidents revealed the following:

—The tires, P/N 028–520–1 (22x5.75–12/10PR), were manufactured by the Michelin Aircraft Tire Corporation (FAA Manufacturing Approval: TSO-C62c);

—The cause of the failure is attributed to separations that developed in the crown region of the tire with the rubber component below the tread reinforcing plies;

—The separations are attributed to low adhesion caused by a misplaced rubber compound; and

—A check of the company records reveals that a total of 137 tires were manufactured in this lot and the remaining 135 tires could contain this same low adhesion problem.

The P/N 028–520–1 (22x5.75–12/10PR) tires are predominantly installed on Cessna Model 650 (Citation III, VI, and VII) airplanes; however, they could be installed on other airplanes.

After reviewing and examining all available information to the incidents received above, the FAA has determined that (1) the remaining 135 tires manufactured in the lot that could have a possible low adhesion problem should be removed from service; and (2) AD action should be taken to prevent loss of control of the airplane during landing operations because of failure of a Michelin Aircraft Tire Corporation P/N 028–520–1 (22x5.75–12/10PR) tire.

Since an unsafe condition has been identified that is likely to exist or develop in other airplanes that are equipped with at least one Michelin Aircraft Tire Corporation P/N 028–520–1 (22x5.75–12/10PR) tire (serial numbers as referenced in the actual AD) installed on the main landing gear, the FAA issued priority letter AD 95–24–10 to require replacing any of the affected tires with an FAA-approved tire.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 21, 1995, to all known U.S. operators of airplanes with a Michelin Aircraft Tire Corporation P/N 028–520–1 (22x5.75–12/10PR) tires installed on the main landing gear. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–88–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–24–10 Michelin Aircraft Corporation: Amendment 39–9500; Docket No. 95–CE–88–AD.

Applicability: Part number (P/N) 028–520–1 (22x5.75–12/10PR) tires with the following serial numbers that are installed on the main landing gear of, but not limited to, Cessna Model 650 (Citation III, VI, and VII) airplanes that are certificated in any category:

Serial Nos.

4279N00339	4279N00340	4279N00341
4279N00342	4279N00343	4279N00597
4279N00598	4279N00599	4279N00600
4279N00601	4280N00075	4280N00199
4280N00200	4280N00201	4280N00203
4280N00204	4280N00205	4280N00206
4280N00360	4280N00361	4282N00352
4283N00099	4283N00100	4283N00101
4283N00102	4283N00200	4283N00201
4283N00202	4283N00453	4283N00454
4283N00455	4283N00456	4284N00612
4284N00613	4284N00614	4284N00615
4284N00616	4285N00100	4285N00101
4285N00102	4285N00103	4285N00104
4285N00105	4285N00106	4285N00107
4285N00108	4285N00347	4285N00348
4285N00349	4285N00353	4285N00354
4285N00355	4285N00356	4285N00608
4285N00609	4286N00103	4286N00104

4286N00105	4286N00106	4286N00442
4286N00443	4286N00444	4286N00445
4286N00446	4286N00447	4286N00448
4286N00449	4286N00450	4286N00600
4286N00601	4286N00602	4286N00603
4286N00604	4286N00605	4286N00606
4286N00608	4286N00609	4287N00088
4287N00089	4287N00090	4287N00091
4287N00092	4287N00093	4287N00094
4287N00095	4287N00096	4287N00097
4287N00357	4287N00358	4287N00359
4287N00360	4287N00361	4287N00362
4287N00363	4287N00364	4288N00118
4288N00119	4288N00120	4288N00121
4288N00302	4288N00303	4288N00304
4288N00305	4288N00306	4288N00307
4290N00111	4290N00113	4290N00114
4290N00115	4290N00116	4290N00117
4290N00355	4290N00356	4290N00606
4290N00607	4290N00608	4290N00609
4290N00610	4290N00611	4290N00612
4291N00082	4291N00083	4291N00084
4291N00085	4291N00086	4291N00087
4291N00088	4291N00089	4291N00091
4291N00273	4291N00274	4291N00275
4291N00276	4291N00277	4291N00278
4291N00620	4291N00621	

Note 1: This AD applies to each tire identified in the preceding applicability provision that is installed on an airplane, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD (see NOTE 2), except to those operators receiving this action by priority letter issued November 21, 1995, which made these actions effective immediately upon receipt.

To prevent loss of control of the airplane during landing operations because of P/N 028–520–1 (22x5.75–12/10PR) tire failure, accomplish the following:

(a) Replace any of the P/N 028–520–1 (22x5.75–12/10PR) tires identified in the Applicability section of this AD with an FAA-approved tire.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Information that applies to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–9500) becomes effective on February 21, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–24–10, issued November 21, 1995, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 23, 1996.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1573 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–ANE–32; Amendment 39–9490; AD 94–05–05 R1]

Airworthiness Directives; Teledyne Continental Motors Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 Series and Rolls-Royce, plc C90, O–200 and O–300 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines, that currently requires inspection of the cylinder rocker shaft bosses for cracks, and inspection of the cylinder rocker shaft for looseness and replacement, if necessary, with a serviceable part. This amendment clarifies that the inspection must be accomplished at the next cylinder removal from the engine or engine overhaul, whichever occurs first, and adds certain Rolls-Royce, plc engines to the AD's applicability. This amendment is prompted by the need to clarify when the inspection must be performed. The actions specified by this AD are intended to prevent engine power loss and engine failure.

DATES: Effective February 13, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, GA, 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On February 18, 1994, the Federal Aviation Administration (FAA) issued AD 94–05–05, Amendment 39–8843 (59 FR 10057, March 3, 1994), applicable to Teledyne Continental Motors (TCM) Models C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series reciprocating engines, to require inspection of the cylinder rocker shaft bosses for cracks, and inspection of the cylinder rocker shaft for looseness and replacement, if necessary, with a serviceable part. That action was prompted by reports of cracked or improperly repaired cylinder rocker shaft bosses. That condition, if not corrected, could result in engine power loss and engine failure.

Since the issuance of that AD, the FAA has received reports indicating confusion among operators as to when the inspection must be performed. The FAA has learned that an operator removed a cylinder from an affected engine but did not do the inspection specified by AD 94–05–05, claiming that the inspection need only be accomplished when a cylinder is removed for an overhaul, but not for a repair. That is not the intent of the current wording of the AD. The FAA has therefore revised the compliance requirement in this AD to state that the inspection must be performed at the next cylinder removal from the engine, or engine overhaul, whichever occurs first.

In addition, the Civil Aviation Authorities of the United Kingdom and Denmark notified the FAA that the AD should apply also to Rolls-Royce, plc C90, O–200 and O–300 series reciprocating engines, as they were produced by Rolls-Royce, plc under a licensing agreement with TCM. Some time after production ceased, continuing airworthiness responsibility reverted to TCM. The FAA has therefore added these Rolls-Royce, plc engines to the AD's applicability.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD revises AD 94–05–05 to clarify that the inspection must be

accomplished at the next cylinder removal from the engine or engine overhaul, whichever occurs first, and to add certain Rolls-Royce, plc engines to the AD's applicability.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 92–ANE–32.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8843 (59 FR 10057, March 3, 1994) and by adding a new airworthiness directive, Amendment 39–9490, to read as follows:

94–05–05 R1 Teledyne Continental Engines and Rolls-Royce, plc: Amendment 39–9490. Docket 92–ANE–32. Revises AD 94–05–05, Amendment 39–8843.

Applicability: Teledyne Continental Motors (TCM) Model C75, C85, C90, C125, C145, O–200, O–300, and GO–300 series and Rolls-Royce, plc (R–R) C90, O–200 and O–300 series reciprocating engines, installed on but not limited to American Champion models 7BCM, 7CCM, 7DC, S7DC, S7CCM, 7EC, S7EC, 7FC, 7JC, and 7ECA; Cessna Models 120, 140, 150, 170, 172, 172A–H, and 175; Luscombe Models 8E, 8F, and T–8F; Maule Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Piper Models PA–18 and PA–19; Reims Aviation SA Models F172D, E, F, G, H, K; F150G, H, J, K, L, M; FA150K, L; FRA150L; Swift Models GC–1A and GC–1B; Univair (Erco) Models 415–D, E, and G; Univair (Forney) Models F–1 and F–1A; Univair (Alon) Model A–2 and Univair (Mooney) Model M–10 aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and engine failure, accomplish the following:

(a) At the next cylinder removal from the engine, or engine overhaul, whichever occurs first, after the effective date of this AD, inspect the cylinder rocker shaft bosses for cracks using one of the following methods, and if cracked replace with a serviceable cylinder:

Note: Certain cylinder cracks may be repaired by FAA-approved repair stations specifically rated to do those repairs.

(1) Fluorescent penetrant inspection, as follows:

(i) The penetrant shall be a nontoxic, noncorrosive, highly fluorescent liquid capable of penetrating fine discontinuities and, for aluminum castings, conforming to Aerospace Material Specification (AMS) 3156. If a darkened enclosure is not used for examination, AMS 3157 penetrant shall be used.

(ii) The emulsifier shall be composed of suitable oil or oil-like components together with such additives as are necessary to provide a stable, nontoxic, noncorrosive, oil-miscible, oil-emulsifying solution. Emulsifier shall not be used when AMS 3156 is used.

(iii) The developer shall be a highly absorbent, nonfluorescent and nontoxic powder, capable of being used dry or a similar powder capable of being suspended in water. When the suspension is used, the powder shall be thoroughly mixed with water to a concentration, unless otherwise permitted, of not less than 0.2 lb per gallon and a uniform distribution maintained by mechanical agitation.

(iv) The penetrant, the emulsifier (if used) and the developer shall be checked as often as necessary to maintain proper control. The penetrant shall be discarded if it shows a noticeable loss in penetrating power or marked contamination or when wax begins to form on the sides of the tank and dip basket.

(v) A darkness booth or a similar darkness area with a filtered black light shall be

provided. The black light shall be at least equal to that produced by a 100 watt mercury vapor projection spot lamp equipped with a filter to transmit wave lengths of between 3200 and 4000 Angstrom units and absorb substantially all visible light. The intensity of the light at normal working distance shall be as specified by the purchaser but in no case shall be lower than 580 micro-watts per square centimeter as measured with an appropriate black light meter.

(vi) All parts shall be cleaned and dried in such a manner as to leave them free from grease, oil, soaps, alkalis and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(vii) Parts shall be immersed in the penetrant or shall be sprayed or brushed with the penetrant and shall be allowed to remain immersed in the penetrant or to stand for sufficient time to allow satisfactory penetration into all discontinuities. This time shall, unless otherwise specified, not be less than 5 minutes. The time for immersion or standing will depend upon the character and fineness of the discontinuities, the effectiveness of penetration increasing with time. Parts may be resprayed or re-immersed after standing to increase sensitivity and aid in removal of penetrant.

(viii) Parts shall be removed from the penetrant and cleaned thoroughly using a medium which will remove penetrant from the surface of parts; washing with water shall be used when the penetrant is water washable or when an emulsifying agent is applied to surfaces of parts to render the penetrant water washable. When emulsifiers are used, the parts shall be dipped in the emulsifier and removed slowly for draining or shall be sprayed with emulsifier and drained. Unless otherwise specified, the combined dipping and draining time shall be 1 to 5 minutes. When other than water washable penetrants are used, the penetrant shall be removed with a suitable cleaner or a suitable cleaner and lint-free cloths. During cleaning, the parts may be viewed under a suitable black light to ensure removal of the penetrant from the subrace of the part. Excessive cleaning which would remove the penetrant from discontinuities shall be avoided.

(ix) When a wet developer is used, the developer shall be applied to the parts, immediately after washing, by immersing the parts in the tank containing the water-suspended powder or by spraying or flowing the suspension onto the parts. The suspension shall be suitably agitated either during or immediately prior to application to parts. Immersed parts shall be removed from the wet developer; excess developer shall be allowed to drain off all parts. Special care shall be taken to remove excess developer from pockets, recesses, holes, threads, and corners so that the developer will not mask indications.

(x) When a dry developer or no developer is used, the parts shall be dried as thoroughly as possible by exposure to clean air. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Excessive drying time or part temperatures higher than 80° C (180° F) should be avoided to prevent evaporation of the penetrant.

(xi) When a dry developer is used, the developing powder shall be applied uniformly over the areas of the parts to be inspected by either dusting or powder-box immersion.

(xii) After sufficient time has been allowed to develop indications, parts shall be examined under a black light. Examination shall be made in a darkened enclosure unless AMS 3157 penetrant is used, in which case examination may be made under normal shop lighting but shaded from direct sunlight.

(xiii) When greater sensitivity is desired, the parts may be heated to 65–85 °C (150–185 °F) before immersion in the penetrant and/or before black light examination. To prevent evaporation, preheated parts hall remain fully immersed in the penetrant until cooled.

(xiv) Parts shall be cleaned, as necessary, to remove penetrant and developer.

(xv) Interpretation of the indications revealed by this inspection procedure and final disposition of the parts shall be the responsibility of only qualified personnel having experience with fluorescent penetrant inspection.

(xvi) Parts having discontinuities (cracks) shall be rejected.

(2) Dye penetrant inspection, as follows:

Note: Military Specification MIL–I–6866 and American Society of Testing Materials specifications ASTM E1417–93 and E165–9 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalis, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* after preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75 °C (165 °F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50 °C (120 °F) before proceeding to the developing procedure.

(v) *Developing:* apply the developer to the dry parts as lightly and as evenly as possible, using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* all penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* most penetrants, cleaning agents, and developer suspensions are low flash point material; use caution to prevent fires.

(3) Etching inspection, as follows:

(i) For TCM C75, C85, C90, O–200 and R–R C90 and O–200 series engines, in accordance with paragraph 13–7 of TCM Overhaul Manual Form X–30010, dated January 1984.

(ii) For TCM C125, C145, O–300, GO–300 and R–R O–300 series engines, in accordance with paragraphs 5(b)(1), 5(b)(2), and 5(b)(3) of TCM Overhaul Manual Form X–30013, dated June 1982.

(b) At the next cylinder removal from the engine, or engine overhaul, whichever occurs first, after the effective date of this AD, dimensionally inspect cylinders for looseness of the rocker shaft in accordance with page 22, paragraph 5, and Table IX of TCM Overhaul Manual Form X–30013, dated June 1982, for TCM C125, C145, O–300, GO–300 and R–R O–300 series engines, and the dimensions table in paragraph 13–8 of TCM Overhaul Manual Form X–30010, dated January 1984, for TCM C75, C85, C90, O–200 and R–R C90 and O–200 series engines; as applicable.

(1) Cylinders that do not exhibit dimensional looseness of the rocker shaft beyond the limits specified in the applicable TCM overhaul manual may be returned to service.

(2) For cylinders that exhibit dimensional looseness of the rocker shaft, beyond the limits specified in the applicable TCM overhaul manual, accomplish the following:

(i) Replace with a serviceable cylinder; or

(ii) Install bushings in accordance with the instructions on page 27 of TCM Overhaul Manual, Form X–30013, dated June 1982, for TCM C125, C145, O–300, GO–300 and R–R O–300 series engines; or the instructions on page 85 of TCM Overhaul Manual, Form X–30010, dated January 1984, for TCM models C75, C85, C90, O–200 and RR C90 and O–200 series engines, as applicable.

(iii) After repairing a cylinder perform an additional inspection of the cylinder rocker shaft bosses for cracks using fluorescent penetrant, dye penetrant, or etching methods, and replace, if necessary, with a serviceable cylinder.

(c) Thereafter, at each subsequent cylinder or engine overhaul, reinspect cylinder rocker bosses and rocker shafts in accordance with paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

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

(f) This amendment becomes effective on February 13, 1996.

Issued in Burlington, Massachusetts, on January 11, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–1409 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–42]

Amendment of Class E Airspace; Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Phoenix, AZ. Additional controlled airspace is required for aircraft arriving Phoenix Sky Harbor International Airport. The intended effect of this action is to improve service to the users and reduce controller workload for those aircraft inbound to Phoenix Sky Harbor International Airport, Phoenix, AZ.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On December 7, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Phoenix, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations 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. Class E airspace designations listed in this document will be published subsequently in this order.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Phoenix, AZ. The intended effect of this action is to provide additional controlled airspace for aircraft arriving at Phoenix Sky Harbor International Airport, Phoenix, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Phoenix Sky Harbor International Airport, AZ [Revised]

Phoenix Sky Harbor International Airport, Phoenix, AZ
(lat. 33°26′10″ N, long. 112°00′34″ W)
Williams Gateway Airport, AZ
(lat. 33°18′28″ N, long. 111°39′19″ W)
Luke AFB, AZ
(lat. 33°32′06″ N, long. 112°22′59″ W)

That airspace extending upward from 700 feet above the surface within a 17.4-mile radius of Luke AFB and within a 17.4-mile radius of Williams Gateway Airport and within 2 parallel tangent lines connecting the two 17.4-mile radius circles, and that airspace northwest of Phoenix Sky Harbor International Airport bounded by a line beginning at lat. 33°59′00″ N, long. 112°38′03″ W; to lat. 33°49′24″ N, long. 112°25′34″ W, thence counterclockwise via the 17.4-mile radius of Luke AFB to lat. 33°42′00″ N, long. 112°40′08″ W; to lat. 33°44′00″ N, long. 112°45′03″ W; to lat. 33°55′00″ N, long. 112°45′03″ W, to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°10′00″ N, long. 112°39′03″ W; to lat. 34°10′00″ N, long. 111°30′03″ W; to lat. 34°00′00″ N, long. 110°52′02″ W; lat. 32°33′00″ N, long. 110°52′02″ W; to lat. 32°33′00″ N, long. 112°00′02″ W; to lat. 32°51′00″ N, long. 112°37′03″ W; to lat. 32°51′00″ N, long. 113°00′03″ W; to lat. 33°19′00″ N, long. 113°00′03″ W; to lat. 33°19′00″ N, long. 113°10′03″ W; to lat. 34°00′00″ N, long. 113°10′03″ W; to lat. 34°00′00″ N, long. 112°52′03″ W, thence to the point of beginning. That airspace extending upward from 5,500 feet MSL west of Phoenix Sky Harbor International Airport bounded on the north by the south edge of V–16, on the east by the west boundary of the 1,200 foot portion of the Class E airspace area; on the south by the north edge of V–66 and on the west by long. 114°00′03″ W, excluding that airspace within Restricted Areas R–2308A, R–2308B, R–2308C, and R–2307. That airspace extending upward from 7,000 MSL bounded on the north by lat. 34°00′00″ N, on the east by long. 113°10′03″ W; on the south by the north edge of V–16 and on the west by long. 114°00′03″ W. That airspace extending upward from 9,500 feet MSL bounded on the north by the south edge of V–12, on the east by the west edge of V–327, on the south and southeast by the north and northwest boundary of the 1,200 foot portion of the Class E airspace area, and on the southwest by a line extending from lat. 34°08′48″ N, long. 112°40′37″ W, to the point of intersection on long. 113°10′03″ W, and the south edge of V–12. That airspace extending upward from 10,500 feet MSL bounded on the north by the south edge of V–12/264, on the southeast by the northwest edge of V–567 and on the west by the east

edge of V–327. That airspace extending upward from 10,500 feet MSL bounded on the northwest by the southeast edge of V–567, on the southeast by the northwest edge of V–95 and on the south by the north boundary of the 1,200 foot portion of the Class E airspace area.

* * * * *

Issued in Los Angeles, California, on January 12, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–1442 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASO–25]

Establishment of Class E Airspace; Stuart, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 Standard Instrument Approach Procedures (SIAP's) have been developed for Witham Field. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Stuart, FL (60 FR 58020). This action will provide adequate Class E airspace for IFR operations at Witham Field.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Stuart, FL, to accommodate GPS RWY 11 and GPS RWY 29 SIAP's and for IFR operations at Witham Field. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of these SIAP's.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 above the surface of the earth.

* * * * *

ASO FL E5 Stuart, FL [New]

Witham Field, FL

(lat. 27°10′51″ N, long. 80°13′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Witham Field.

* * * * *

Issued in College Park, Georgia, on January 17, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–1437 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–23]

Establishment of Class E Airspace; Sandpoint, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Sandpoint, Idaho, Class E airspace. This action is necessary to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Dave Wall Field, Sandpoint, Idaho. A minor correction is being made in the geographic position coordinates of Dave Wall Field and Spokane Fairchild AFB, Washington. An inadvertent error in the Notice of Proposed Rulemaking is also corrected to reflect the intent to create a new Class E airspace, not revise an existing Class E airspace.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, System Management Branch, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–23, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On October 24, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Sandpoint, Idaho, to accommodate a new GPS SIAP to Dave Wall Field (60 FR 54458). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The geographic coordinates for Spokane Fairchild AFB, Washington and Dave Wall Field, Sandpoint, Idaho, as provided by the National Ocean

Service, and the National Flight Data Digest Number 237 dated December 11, 1995, respectively, are corrected herein. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class E airspace at Sandpoint, Idaho. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM ID E5 Sandpoint, ID [New]

Dave Wall Field, Sandpoint, ID
(lat. 48°17′55″ N, long. 116°33′39″ W)
Spokane Fairchild AFB, WA
(lat. 47°36′54″ N, long. 117°39′29″ W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Dave Wall Field; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 48°30′00″ N, on the east by the Idaho/Montana state boundary, on the south by the north edge of V–120, and on the west by the 45.3-mile radius of the Fairchild AFB and the east edge of V112; excluding Federal airways.

* * * * *

Issued in Seattle, Washington, on January 9, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–1441 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–32]

Amendment of Class E Airspace; Lovelock, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects certain geographic coordinates that were inadvertently inserted in the final rule that was published in the Federal Register on January 3, 1996, Airspace Docket No. 95–AWP–32. The final rule amends Class E airspace at Lovelock, NV.

EFFECTIVE DATE: 0901 UTC February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–58, Airspace Docket No. 95–AWP–32, published on January 3, 1996 (61 FR 121), revised the description of the Class E airspace area at Lovelock, NV. An error was made by duplicating the geographic coordinates for a portion of the airspace description for the Lovelock, NV, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates in a portion of the airspace description for the Class E airspace area at Lovelock, NV, as published in the Federal Register on January 3, 1996 (61 FR 121), (Federal Register Document 96–58), are corrected as follows:

§ 71.1 [Corrected]

AWP NV E5 Lovelock, NV [Corrected]

On page 122, column 2, the geographic coordinates for the Class E airspace at Lovelock, NV are corrected by removing ''(and that airspace bounded by a line beginning at lat. 40°23′00″ N, long. 118°29′00″ W; to lat. 40°32′00″ N, long. 118°14′00″ W; to lat. 40°22′00″ N, long. 118°14′00″ W; to lat. 40°18′00″ N, long. 118°23′00″ W, thence to the point of beginning.).''

Issued in Los Angeles, California, on January 12, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–1436 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–41]

Establishment of Class E Airspace; North Las Vegas Air Terminal, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at North Las Vegas Air Terminal, Las Vegas, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at North Las Vegas Air Terminal, Las Vegas, NV.

EFFECTIVE DATE: 0901 UTC, April 25, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On December 6, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E

airspace area at North Las Vegas Air Terminal, Las Vegas, NV (60 FR 62351). The development of a GPS SIAP at North Las Vegas Air Terminal has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations 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. Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at North Las Vegas Air Terminal, Las Vegas, NV. The development of a CPS SIAP at North Las Vegas Air Terminal has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 12 SIAP at North Las Vegas Air Terminal, Las Vegas, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP NV E5 North Las Vegas Air Terminal, NV. [New]

North Las Vegas Air Terminal, NV
(lat. 36°12′42″ N, long. 115°11′45″)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of North Las Vegas Air Terminal.

* * * * *

Issued in Los Angeles, California, on January 12, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–1443 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AEA–02]

Revocation of Class E5 Airspace; Farmington, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revokes Class E5 airspace areas extending upward from 700 feet above the surface of the earth at Farmington, PA. This airspace was established for a Standard Instrument Approach Procedure (SIAP), VOR RWY 23, serving Nemacolin Airport. This SIAP has been canceled.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, System Management Branch, AEA–530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 30, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class E5 airspace at Farmington, PA. This airspace extended upward from 700 feet above the surface for a SIAP serving the Nemacolin Airport, a private use airport. The SIAP has been canceled and there are no other instrument procedures at that airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comment on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be subsequently removed from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace at Farmington, PA by revoking the Class E5 airspace associated with the former standard instrument approach procedure at Nemacolin Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

AEA PA E5 Farmington, PA [Removed]

* * * * *

Issued in Jamaica, New York, on January 12, 1996.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 96–1440 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ANM–21]

Amendment to Class E Airspace; St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the St. George, Utah, Class E airspace. This action is necessary to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 34 at St. George Municipal Airport, St. George, Utah.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, System Management Branch, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–21, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On October 24, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at St. George, Utah, to accommodate a new GPS SIAP to Runway 34 at St. George Municipal Airport (60 FR 54457). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for errors (corrected herein) in geographical coordinates of the airspace description. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at St. George, Utah. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * * *

ANM UT E5 St. George, UT [Revised]

St. George Municipal Airport, UT
(lat. 37°05′29″ N, long. 113°35′35″ W)
St. George VOR/DME
(lat. 37°05′17″ N, long. 113°35′31″ W)

That airspace extending upward from 700 feet above the surface within 8.3 miles northeast and 5.3 miles southwest of the St. George VOR/DME 131° and 311° radials extending from 6.1 miles northwest to 16.1 miles southeast, and within 4.3 miles each side of the St. George VOR/DME 183° radial extending from the VOR/DME to 13.5 miles south; that airspace extending upward from 1,200 feet above the surface within the 20.1-mile radius of the St. George VOR/DME, extending clockwise from the 058° radial to the 239° radial, and within 10.1 miles east and 7.4 miles west of the St. George VOR/DME 183° radial extending from the 20.1-mile radius to 32.7 miles south of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 37°57′00″N, long. 114°02′00″W; to lat. 37°46′00″ N, long. 113°23′00″ W; to lat. 37°38′15″ N, long. 113°22′18″ W; to lat. 37°38′42″ N long. 113°16′48″ W; to lat. 37°38′20″ N, long. 113°12′40″ W; to lat. 37°17′20″ N, long. 113°20′00″ W; to lat. 37°12′35″ N, long. 113°30′20″ W; to lat. 37°15′33″ N, long. 113°34′27″ W; to lat. 37°05′40″ N, long. 113°45′00″ W, thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on January 5, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–1434 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28427; Amdt. No. 1704]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

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

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

The Rule

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

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 29, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6679	ILS RWY 18L, AMDT 7B...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6680	ILS RWY 36R CAT/III/, AMDT 10...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6681	ILS RWY 36R AMDT 10...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6682	ILS RWY 36R/CAT II/, AMDT 10...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6683	NDB RWY 36R, AMDT 7...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6684	RADAR–1, AMDT 37...
12/13/95	TN	Memphis	Memphis Intl	FDC 5/6685	DEP PROCS/TKOF MNMS AMDT 12...
12/14/95	SC	Summerville	Summerville/Dorchester County	FDC 5/6705	NDB or GPS RWY 5, ORIG–A...
12/15/95	IA	Des Moines	Des Moines Intl	FDC 5/6715	ILS RWY 13L, AMDT 6...
12/15/95	OH	Wadsworth	Wadsworth Muni	FDC 5/6726	NDB or GPS RWY 2, AMDT 5...
12/18/95	OH	Wadsworth	Wadsworth Muni	FDC 5/6746	VOR/DME–A AMDT 1...
12/20/95	KY	Louisville	Louisville Intl-Standiford Field	FDC 5/6805	ILS RWY 35, ORIG...
12/20/95	MO	Kansas City	Kansas City Intl	FDC 5/6785	ILS RWY 19L, ORIG–A...
12/21/95	MA	Worcester	Worcester Muni	FDC 5/6835	VOR/DME RWY 33, ORIG...

[FR Doc. 96–1433 Filed 1–26–96; 8:45 am]
BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is: confirming that the Part 30 Order issued on February 17, 1993 (the ''Initial Order'') to the Tokyo Grain Exchange (TGE) continues in effect subsequent to the merger on October 1, 1993 of the TGE with the Tokyo Sugar Exchange (TSE) with the TGE as the surviving entity; and allowing the option contract on the raw sugar futures contract traded on TGE to be offered or sold to persons located in the United States.

This Order is issued pursuant to Commission rules 30.3 and 30.10, 17 CFR 30.3 and 30.10 (1995), which: granted an exemption to designated members of the Exchange from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with comparable Japanese regulatory and self-regulatory requirements; and authorized options on U.S. soybean futures contracts traded on the TGE to be offered or sold in the United States, 58 FR 10953 (Feb. 23, 1993). By this Order, the Commission also acknowledges the substitution of the merged TGE as the party to several ongoing information sharing and financial intermediary recognition arrangements entered into with the former TGE, the Ministry of Agriculture, Forestry and Fisheries (''MAFF'') and the Commission as described in the Initial Order.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5435.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before The Commodity Futures Trading Commission

Order Pursuant to Commission Rules 30.3 and 30.10 Confirming that the Initial Order to the TGE Continues in Effect Subsequent to the Merger of TGE and TSE and Permitting Option Contracts on the Raw Sugar Futures Contract Traded on the TGE To Be Offered or Sold to Persons Located in the United States Thirty Days After Publication of This Notice in the Federal Register Absent Further Notice

In the Initial Order,[1] the Commission exempted certain designated members of the TGE from the application of certain of the foreign futures and option rules based on substituted compliance with comparable Japanese regulatory and self-regulatory requirements and allowed option contracts on U.S. soybean futures contracts traded on the TGE to be offered or sold in the United States.[2] Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any Tokyo Grain Exchange option product in the United States shall be made until thirty days after publication in the Federal Register of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

On October 1, 1993, the membership of the TSE merged with the TGE with the TGE as the surviving entity. The merger was approved by the MAFF, the government regulator with oversight responsibility for both exchanges.

The Exchange has represented, among other things, that the basis upon which the Commission issued the Initial Order as well as the terms and conditions set forth therein continue in effect with respect to TGE subsequent to the merger with TSE.[3] In particular, the Exchange has represented that:[4]

(1) the recognition and continued oversight by MAFF of TGE remain unaffected by the merger;

(2) the TSE futures and options which are now traded on the TGE Sugar Market are designated and traded according to the requirements of the Japanese Commodity Exchange Law (''CEL''), which the Commission considered in issuing the Initial Order to the TGE; and

[1] See 58 FR 10953 (February 23, 1993).

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

[3] In this connection, the Initial Order was issued, in part, based on the Exchange's commitment to phase in physical segregation requirements for customer property. Specifically, a special enforcement order issued by MAFF on December 14, 1990 required that one quarter of all customer property held by an FCM be physically segregated in accordance with Article 92–2 of the CEL, with an additional quarter to be segregated on April 1 of each subsequent year until April 1, 1996, when 100% of all customer property will be required to be segregated. Therefore, 75% of customer property is currently subject to physical segregation at the TGE. Under the CEL, the segregation protection is supplemented by the Guarantee Money Fund, the Commodity Transaction Responsible Reserve Fund, Membership Trust Money and the Compensation Fund.

[4] *See* letter dated June 14, 1995 from Seiji Mori, TGE, to Andrea M. Corcoran, Commission and letters dated July 11 and July 28, 1995 from Itsuji Yanagisawa, TGE, to Jane C. Kang, Commission.

(3) no significant rule changes have been implemented at TGE as a result of the merger: the only modifications made to date have been those necessary to bring futures and options contracts traded at TSE within the TGE regulatory structure.

In particular, the TGE has summarized relevant changes resulting from the merger as follows:

(1) *Membership.* Although many TSE members were also TGE members, TSE had an additional category of membership—associate members who are permitted to trade only for their own accounts and must execute their trades through a futures commission merchant (''FCM'') member of the TGE. Therefore, TGE rules were amended to add associate members to the existing regular member and FCM categories.

(2) *Creation of Two Markets.* The integrated, centrally located TGE marketplace now consists of a TGE Agricultural Market, trading commodities previously associated with TGE and a TGE Sugar Market, trading commodities previously associated with TSE.

(3) *Staff.* Staff of the two exchanges merged to form staff of the TGE to ensure there is no diminution in oversight or staff expertise. The 38 staff members who are responsible for market surveillance comprise one-third of the total Exchange staff.

By letter dated June 14, 1995, TGE requested that the Commission confirm that the Initial Order continues in effect relative to the merged entity which came into existence on October 1, 1993 and supplement the Initial Order authorizing the offer and sale in the United States of options on the U.S. soybean futures contract by also authorizing the TGE's option contract on the raw sugar futures contract to be offered or sold to persons located in the United States. [5]

Based upon the foregoing, and subject to the terms and conditions specified in the Initial Order, the Commission hereby publishes this Order in the Federal Register confirming the continued applicability of the Initial Order to the newly merged entity, TGE, and allowing the option contract based on the raw sugar futures contract traded on the TGE to be offered or sold to persons located in the United States thirty days after publication of this Order in the Federal Register, unless prior to that date the Commission receives any comments which may result in a determination to delay the effective date of the Order pending review of such comments. Under such circumstances the Commission will provide notice.

Contract Specifications Options on Raw Sugar Futures (March 1996 Contract)

Year Contract Began Trading—May 1992

Trading Hours

Morning: Opening Session, 9:10 a.m.–9:30 a.m.; Continuous Session 9:30 a.m.–11:30 a.m.

Afternoon: Opening Session, 1:00 p.m.–1:15 p.m.; Continuous Session, 1:15 p.m.–3:00 p.m.; Closing Session, 3:00 p.m.–3:15 p.m.

Contract Unit—One TGE Raw sugar futures contract

Delivery Months—January, March, May, July, September and November within a 15 month period

Price Quotation—Yen per 1,000 kilogram

Minimum Price Fluctuation—10 yen per 1,000 kilogram (500 yen per contract)

Maximum Daily Price Fluctuation—1,000 yen per 1,000 kilogram with variable limits effective under certain conditions.

Strike Price Increment—1,000 yen per 1,000 kilogram intervals with one strike price at-the-money and minimum of three exercise prices above and three below.

Speculative Position Limits—None

Last Trading Day—The last business day 3 months prior to the delivery month of the underlying futures contract.

Expiration Date—3:45 p.m. of the last trading day

Automatic Exercise—None

Exercise Style—American style. The option holder shall give an exercise notice to the FCMs by 3:30 p.m. of any business day up to the last trading day. FCMs and regular members shall give an exercise notice to the FCMs from 3:00 p.m. to 3:45 p.m. of any business day up to the last trading day. The Exchange shall proportionally assign an exercised position to the option writer.

Customer Margin—The writer shall deposit 50,000 yen (the half amount of the initial margin of the underlying futures contract) plus the option premium per one contract to FCMs.

Commission Fee

New Order, 3,000 yen or less per one contract

Resale/Repurchase (for liquidation), 2,000 yen or less per one contract.

Note: The first trading day of March 1996 contract started from January 4, 1995.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

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

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

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

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

2. Appendix B to Part 30 is amended by adding the following entry after the existing entries for the ''Tokyo Grain Exchange'' to read as follows:

APPENDIX B.—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO § 30.3(A)

Exchange	Type of contract	FR date and citation
* * * * * * *		
Tokyo Grain Exchange	Option Contract on the Raw Sugar Futures Contract	1996; ___FR___
* * * * * * *		

[5] The TGE's application had submitted terms for two option contracts on raw sugar futures contracts. The last trading day for one of those contracts was October 31, 1995. Accordingly, this Order authorizes the one option contract on the raw sugar futures contract which started trading on January 1, 1995 as described below in the ''Contract Specifications''.

Issued in Washington, D.C. on January 22, 1996.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 96–1511 Filed 1–26–96; 8:45 am]

BILLING CODE 6351–01–P

17 CFR Part 33

Deletion of Option Regulation Requiring That Futures Commission Merchants Give Notification of Disciplinary Actions to Their Designated Self-Regulatory Organizations; Regulation 33.4(b)(6)

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending 17 CFR Part 33 to delete Regulation 33.4(b)(6), under which a board of trade must adopt rules that require each member futures commission merchant (''FCM'') that engages in the offer or sale of Part 33 option contracts to give notice to the FCM's designated self-regulatory organization (''DSRO'') of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another self-regulatory organization (''SRO''). The purpose of this deletion is to eliminate unnecessary recordkeeping requirements affecting FCMs.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney, Commodity Futures Trading Commission, Division of Trading and Markets, Three Lafayette Centre, 1155 21 Street NW., Washington, DC 20581. Telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation 33.4(b)(6) is part of a group of regulations that date from the Commission's three-year pilot program, instituted by the Commission on November 3, 1981, for the trading on domestic exchanges of options on non-agricultural futures contracts. The establishment of the pilot program was the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment. Subsequently, the Commission adopted a pilot program that expanded the trading of options to non-agricultural physical commodities. 47 FR 65996 (December 22, 1982). On January 23, 1984, the Commission adopted a separate three-year pilot program that expanded the trading of options on futures contracts to domestic agricultural commodities. 49 FR 2752. Overall, the Commission found that each pilot program had been a success.[1]

Part 33 of the Commission's regulations governs domestic exchange-traded commodity option transactions. Regulation 33.4, in conjunction with the requirements of Section 5 of the Commodity Exchange Act (''Act''), sets forth the requirements which a board of trade must meet in order to be designated as a contract market for the trading of option contracts. Part 33, including Regulation 33.4, was adopted concurrently with the initial implementation of the first pilot program in 1981. Under Regulation 33.4(b)(6), a board of trade must adopt rules that require each member FCM which engages in the offer or sale of Part 33 option contracts to give notice to the FCM's DSRO of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another SRO.

By letter dated September 11, 1992, the Chicago Board of Trade (''CBT'') petitioned the Commission for deletion of Regulation 33.4(b)(6). In support of its petition, the CBT explained that, along with other futures exchanges, it has joined the National Futures Association (''NFA'') in implementing a centralized repository for the entry of information on exchange disciplinary actions the (''NFA Clearinghouse'').[2] The CBT stated that it believes that because the NFA Clearinghouse includes data on Commission, NFA and exchange disciplinary actions, the reporting requirements imposed on FCMs by Regulation 33.4(b)(6) are now duplicative and should be abolished.[3]

The NFA Clearinghouse went into effect in late January 1991. At that time, several exchanges began to file their disciplinary action data electronically into the NFA Clearinghouse database through what the NFA refers to as the exchange disciplinary action portion for the NFA Clearinghouse. The NFA Clearinghouse, which the exchanges have entered into voluntarily, permits the Commission and the exchanges to enter and review disciplinary action data, including disciplinary actions taken against an FCM or any of its associated persons by the Commission or by another SRO, via computer terminals at their respective locations.[4]

II. Proposed Rule

On January 19, 1993, the Commission's proposal to delete Regulation 33.4(b)(6) was published in the Federal Register (58 FR 4948). This proposal was made in response to the CBT's September 11, 1992 petition for deletion of Regulation 33.4(b)(6). The Commission stated that the NFA Clearinghouse appeared to satisfy the objective of Regulation 33.4(b)(6) by providing a repository for, among other things, exchange disciplinary actions. In making the proposal to delete Regulation 33.4(b)(6), the Commission stated that before it approved final deletion of the regulation, it intended to examine exchange and NFA refinements to the operation of the NFA Clearinghouse to determine whether the system would serve the purpose of Regulation 33.4(b)(6).

III. Comments Received

The Commission received one comment letter, from the NFA, that supported the proposed deletion of Regulation 33.4(b)(6). The NFA commented that it believes that Regulation 33.4(b)(6) places an unnecessary regulatory burden upon FCMs because the Commission, members of the public, and any DSRO may already obtain disciplinary information, without an FCM's specific disclosure, by accessing the NFA Clearinghouse.

IV. Final Rule

Commission staff has been monitoring each exchange's use of the NFA Clearinghouse. Since August 1991, the majority of the exchanges have been

[1] By February 9, 1987, the Commission had made the programs permanent. Option trading on non-agricultural futures was made permanent effective August 1, 1986. 51 FR 17464 (May 13, 1986); 51 FR 27529 (August 1, 1986). Option trading on agricultural futures and options on non-agricultural physicals were made permanent effective February 9, 1987. 52 FR 777 (January 9, 1987).

[2] For background on the NFA Clearinghouse, see generally 58 FR 4949 (January 19, 1993).

[3] It should be noted that on September 4, 1992, the Commission proposed the deletion of two other provisions in Regulation 33.4: Regulation 33.4(b)(4)(iii) and Regulation 33.4(b)(8). 57 FR 40626. On December 14, 1992, the deletion of these two regulations became final. See 57 FR 58976. Under these regulations, boards of trade designated as contract markets for options were required to adopt rules requiring member FCMs that engaged in the offer or sale of commodity options regulated under Part 33 to send copies of customer complaints, the record of the final disposition thereof, and copies of all promotional material to the member's DSRO.

[4] Currently, the exchanges are required to submit hardcopy notices of disciplinary actions to the Commission pursuant to Regulation 9.11. Ultimately, however, it is anticipated that data will be entered into the NFA Clearinghouse in lieu of filing hardcopy notices. Until the Commission permits such data entry directly into the NFA Clearinghouse, in lieu of such filings, exchanges must continue to file hardcopy notices with the Commission within the 30-day requirement of Regulation 9.11.

electronically filing their respective disciplinary actions into the NFA Clearinghouse in an accurate and timely manner, including disciplinary actions taken against an FCM or any of its associated persons by the Commission or by another SRO, thus satisfying the purpose of Regulation 33.4(b)(6). Typically, exchanges enter directly or with the assistance of NFA, disciplinary action data into the NFA Clearinghouse in an accurate and timely manner.[5]

The disciplinary action data that the exchanges have agreed to enter into the NFA Clearinghouse by the NFA and that are being entered include: (1) The respondent's name; (2) the rule number violated and a description of the rule; (3) which of the ten uniform categories of rule violations adopted by the Joint Compliance Committee (''JCC''),[6] applies to the disciplinary action; [7] (4) the date of the violation; (5) the effective date of the disciplinary action; (6) the sanction or penalty imposed on the named respondent; (7) the name of the exchange committee that imposed the sanction; and (8) whether the offense cited is one that renders the named respondent ineligible from serving on an exchange disciplinary committee, oversight panel, arbitration panel or governing board under the requirements of Commission Regulation 1.63.[8]

In addition, on March 15, 1995, the Commission advised the JCC that the Clearinghouse must include exchange membership denial actions and requested that the exchange enter into the Clearinghouse all membership denial actions from January 1990 to the present to bring the Clearinghouse up-to-date. Currently, the exchanges are entering such data into the Clearinghouse.

V. Conclusion

The Commission believes that, consistent with the other deletions made of Regulation 33.4(b)(4)(iii) and Regulation 33.4(b)(8), the requirements set forth in Regulation 33.4(b)(6) also should be deleted. The Commission also believes that the NFA Clearinghouse satisfies the objective of Regulation 33.4(b)(6) by providing an adequate repository for, among other things, exchange disciplinary actions. The Commission no longer believes that it is necessary for FCMs that engage in the offer or sale of Part 33 option contracts to give notice to the FCM's DSRO of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another SRO. Accordingly, the Commission amends 17 CFR Part 33 by deleting Regulation 33.4(b)(6).

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established that contract markets and FCMs are not ''small entities'' for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). This deletion to Part 33 will permit contract markets to delete rules affecting FCMs and thereby relieve them of that requirement.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (''PRA'') 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget (''OMB''). The OMB approved the collection of information associated with this rule on October 2, 1991 and assigned OMB control number 3038–0007 to the rule. While this rule has no burden, the group of rules of which this is a part has the following burden:

Average burden hours per response.....50.32.
Number of respondents .....190,19.7.
Frequency of response .....on occasion.

Copies of the OMB approved information collection package associated with this rule may be obtained from the Office of Management and Budget, Room 3220, NEOB Washington, DC, (202) 395–7340.

List of Subjects in 17 CFR Part 33

Regulation of domestic exchange-traded commodity option transactions.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, section 4(b) of the Act, the Commission proposes to amend Part 33 of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a–1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(6) is removed.

Issued in Washington, DC, January 23, 1996 by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–1509 Filed 1–26–96; 8:45 am]

BILLING CODE 6351–01–M

[5] The Commission's deletion of the reporting requirement is based, in part, on the existence of the NFA Clearinghouse which provides an adequate substitute mechanism by which SROs may obtain disciplinary information. Should there be any material changes in the operation of the NFA Clearinghouse, the Commission would necessarily evaluate the need for any supplementary reporting requirements.

[6] The JCC was formed in May 1989 and consists of senior compliance officials from each exchange and the NFA. Commission staff is present at each meeting as observers. The JCC was established to aid the development of improved compliance systems through joint exchange efforts and information sharing among the self-regulators. In addition, the JCC has undertaken efforts to enhance exchange compliance with Commission regulations by developing uniform standards and definitions where appropriate.

[7] The ten uniform categories of rule violations adopted by the JCC include: trade practice, sales practice, speculative position limits, financial, financial and position reporting, floor recordkeeping, office recordkeeping, registration, decorum and attire, and general conduct.

[8] Commission Regulation 1.63 prohibits an individual from serving on exchange disciplinary committees, oversight panels, arbitration panels or governing boards who, among other things, was found within the prior three years by a final decision of a SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense or who currently is subject to an agreement with the Commission or any SRO not to apply for registration with the Commission or membership in any SRO. For a complete listing of the conditions under Commission Regulation 1.63 that prohibit an individual from serving on such exchange committees, panels, or boards, see 55 FR 7884 (March 6, 1990).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SD–001; FRL–5406–1]

Clean Air Act Final Full Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating final full approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 28, 1996.

ADDRESSES: Copies of the State's submittal and other supporting

information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, 8ART–AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 312–6441.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On September 21, 1995, EPA published a Federal Register notice proposing full approval of the Operating Permits Program (PROGRAM) for the State of South Dakota. See 60 FR 48942. EPA received one public comment on the proposal, which is addressed below, and is taking final action to promulgate full approval of the South Dakota PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. On March 22, 1995, EPA published a Federal Register document promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Full approval of the South Dakota PROGRAM was not possible at that time due to the following issue identified during EPA's PROGRAM review: The State's criminal enforcement statute only allowed for a maximum penalty of $1,000 for failure to obtain a permit and $500 for violation of a permit condition. The State was required to adopt legislation consistent with § 70.11, prior to receiving full PROGRAM approval, to allow for a maximum criminal fine of not less than $10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device. In a letter dated April 21, 1995, the State submitted evidence that this corrective action had been completed, which EPA has reviewed and has determined to be adequate to allow for full PROGRAM approval. This corrective action included the adoption of Senate Bill 36 by the South Dakota Legislature which contains the necessary language to allow for criminal penalties consistent with § 70.11.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. EPA granted approval of the State's PROGRAM, under section 112(l)(5) and 40 CFR 63.91, for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated for part 70 sources in the Federal Register document promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Based on a State request, EPA is granting the expansion of this approval to include non-part 70 sources. EPA believes this is warranted because State law does not differentiate between part 70 and non-part 70 sources for purposes of implementation and enforcement of section 112 standards that the State adopts. This approval does not delegate authority to the State to enforce specific section 112 standards, but instead establishes a basis for the State to request and receive future delegation of authority to implement and enforce, for non-part 70 sources, section 112 standards that the State adopts without change.

The scope of the PROGRAM and all of the clarifications made in the Federal Register document proposing interim approval of the South Dakota PROGRAM still apply. See 60 FR 2917.

B. Response to Comments

The comment received on the September 21, 1995 Federal Register notice proposing full approval of the South Dakota PROGRAM, and EPA's response to that comment, is as follows:

Comment: The commenter noted that EPA had indicated in its proposal that approval of South Dakota's PROGRAM would not extend to any lands within Indian Country. The commenter, apparently referring to South Dakota's submission to EPA asserting jurisdiction to enforce a part 70 PROGRAM within Indian reservations, expressed ''opposition to South Dakota's proposal, insofar as it claims authority over lands within the boundaries of the Standing Rock Sioux Reservation.'' The commenter asserted that South Dakota's jurisdictional arguments ignore the express language of the Act and the territorial component of Tribal sovereignty. The commenter cited various Supreme Court cases and provisions of the Act. The commenter urged EPA to reject South Dakota's effort to assert jurisdiction on Indian reservation lands.

EPA Response: The commenter correctly noted that EPA's proposal to fully approve the State's part 70 PROGRAM does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151. EPA does not believe the commenter was making an adverse comment on this aspect of EPA's proposed action, and this final action makes no changes to this aspect of the proposal. As noted in the proposal and in this action, the State has asserted it has jurisdiction to enforce a PROGRAM within Indian reservations and has provided an analysis of such jurisdiction. However, EPA is not acting on the State's analysis in this action. Thus, EPA does not believe the commenter's objections to the State's jurisdictional assertions are directly pertinent to this action and will not respond to them here. The commenter may wish to re-submit such comments at the time EPA proposes action on the State's jurisdictional analysis.

C. Final Action

The EPA is promulgating full approval of the Operating Permits Program submitted by the State of South Dakota on November 12, 1993. Among other things, South Dakota has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA is also approving the expansion of South Dakota's PROGRAM for receiving

delegation of section 112 standards to include non-part 70 sources.

The scope of South Dakota's PROGRAM that EPA is approving in this notice does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151, including the following ''existing or former'' Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a PROGRAM within some or all of these ''existing or former'' Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue and EPA does not wish to delay full approval of the State's PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on PROGRAM approval for sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

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

EPA has determined that this proposed approval 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for South Dakota in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

South Dakota

(a) South Dakota Department of Environment and Natural Resources—Division of Environmental Regulations: submitted on November 12, 1993; effective on February 28, 1996.

(b) (reserved)

[FR Doc. 96–1545 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400100; FRL–4995–4]

Toxic Chemical Release Reporting; Community Right-To-Know; Additional Time to Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Time extensions for submission of reports.

SUMMARY: EPA is announcing that it will allow facilities required to submit Toxic Release Inventory (TRI) reports for calendar year 1995 until August 1, 1996, to file those reports. These TRI reports under section 313 of the Emergency Planning and Community Right-to-Know Act and section 6607 of the Pollution Prevention Act would otherwise be due on or before July 1, 1996. Because of unforeseen circumstances beyond the control of EPA, EPA has been delayed in developing and distributing the reporting package, which includes extensive materials and guidance for preparing TRI reports, for the 1995 reporting year. To allow facilities adequate time to prepare and submit complete and accurate TRI reports, EPA is allowing facilities an extra month in which to report.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, 202-260-9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this notice, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Background

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023 (EPCRA, which is also referred to as

Title III of the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99-499]), requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13106. EPCRA section 313 and PPA section 6607 require that covered facilities report this information on or before July 1 of each year for activities at those facilities during the previous calendar year. EPA is required to put the EPCRA section 313/PPA section 6607 information in an electronic data base that is accessible to the public. This data base is commonly referred to as the Toxics Release Inventory (TRI). State and local governments, industry, non-government organizations, and the public make extensive use of this data base.

Until 1995, TRI reporting was required for 368 chemicals and chemical categories. On November 30, 1994, EPA promulgated final rules that added 286 chemicals and chemical categories of chemicals to the list of toxic chemicals for which reporting is required under EPCRA section 313 and PPA section 6607 (59 FR 61432), and provided an alternate threshold for certain reporting (59 FR 61488). The addition of these chemicals and categories of chemicals in 1994 almost doubled the number of toxic chemicals subject to TRI reporting for calendar 1995. In addition, EPA believes that many facilities will be reporting for the first time. Calendar year 1995 is the first year for which covered facilities are required to submit information on releases under EPCRA section 313 and pollution prevention and recycling data under PPA section 6607 for the newly added chemicals and categories. It is also the first year in which facilities can make use of the alternate reporting threshold. Under EPCRA section 313 and PPA section 6607, these reports are due by July 1, 1996.

Each year, prior to the reporting deadline, EPA develops and sends to facilities a reporting package containing the current TRI reporting form (Form R), the list of toxic chemicals subject to reporting, and instructions for reporting. In recent years, the package has also included a computer diskette containing an automated Form R for electronic reporting. This year's package will also contain a special form for alternate threshold reporting. EPA has found that providing this extensive reporting package reduces confusion and the number of reporting errors, and expedites the whole reporting process. In the past, these packages have been distributed by early March of the year in which reports are due to allow adequate time for review and use by the reporting facilities.

II. Additional Time to Report for 1995

Because Congress and the President, to date, have not approved an appropriations bill for EPA for fiscal year 1996, EPA has been operating since October 1, 1995, under a series of continuing resolutions. On two separate occasions these continuing resolutions have lapsed, resulting in shutdowns of operations at EPA. These shutdowns have totaled 17 working days. Further, in January 1996, EPA's Washington, D.C. area offices were closed for 4 days due to severe inclement weather conditions. During the shutdowns due to lack of appropriations, EPA was not authorized to work on preparing the 1996 TRI reporting package. Since this work is performed in EPA Headquarters in Washington, D.C., EPA was also unable to work on it during the 4 days of closure due to the inclement weather.

Because these shutdowns have resulted in delays in finalizing and distributing the TRI reporting package, including the 1995 Form R and accompanying guidance, beyond EPA's intended distribution date, facilities subject to TRI reporting may not have sufficient time to prepare and submit their reports by July 1, 1996. EPA is concerned that in rushing to report by July 1, facilities may make errors that would reduce the accuracy and utility of the reports and, ultimately, the public data base. This is particularly relevant for first-time reporters. In addition, EPA believes that the delay in the distribution of the reporting package may create concern in the regulated community regarding potential enforcement actions, including civil penalties, for those facilities submitting reports that may contain errors as a result of the late distribution of the EPA reporting package or reporting after the July 1, 1996 deadline.

In recognition of the importance to State and local governments, industry, and the public that facilities submit complete and accurate TRI reports, EPA is allowing all reporting facilities an additional month to August 1, 1996, to submit their 1995 TRI reports. However, reports for the 1995 reporting year that are filed after August 1, 1996, will be subject to EPA enforcement action, where appropriate.

This allowance of additional time for reporting applies only to the EPCRA section 313/PPA section 6607 reporting obligations for TRI reports otherwise due on July 1, 1996, covering calendar year 1995. Nothing in this notice shall be construed to apply to any other EPCRA reporting obligations, or to any TRI reports due for past or future reporting years. Further, this allowance of additional time for reporting applies only to the federal EPCRA section 313/PPA section 6607 reporting obligation; it does not apply to independent obligations under State laws which also require TRI-type reports. However, EPA encourages the States with similar requirements that relate to federal TRI reporting to embrace this allowance of additional time.

To the extent that this action might be construed as rulemaking subject to section 553 of the Administrative Procedure Act, for the reasons stated above, EPA has determined that notice and an opportunity for public comment are impracticable and unnecessary. Providing for public comment might further delay reporting, and, because there is no substantive change in the reporting obligation, other than allowing an additional month, the public will continue to receive the same information, though slightly delayed. Also, public comment would not further inform EPA's decision because the events giving rise to the need to provide extra time for reporting have already occurred. In addition, additional notice and comment procedures in this situation would be contrary to the public interest in timely and accurate reporting of data under EPCRA section 313 and PPA section 6607.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: January 22, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–1540 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–20 and 201–24

[FIRMR Interim Rule 2, Supplement 1]

RIN 3090–AE 71

Amendment of FIRMR Provisions To Modify Requirements for Obtaining Delegations of Procurement Authority

AGENCY: Information Technology Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This change to the Federal Information Resources Management Regulation (FIRMR) revises policies regarding delegations of procurement authority from GSA for the acquisition of Federal information processing (FIP) resources. In a FIRMR rule change issued October 24, 1994, GSA established three tiers of regulatory thresholds for information technology resources: $20 million, $10 million, and $5 million based on the size of an agency's information technology budget and its management record. In letters to all Federal agencies dated June 19, 1995, GSA granted specific agency delegations of procurement authority of $100 million to each agency. This rule change codifies that higher delegation authority by establishing $100 million as the regulatory threshold for agency acquisitions of FIP resources. This change is made in continuation of a long term GSA trend to place greater authority in the hands of the operating agencies. The higher threshold will allow agencies to assume greater responsibility for their acquisitions while allowing GSA to focus on larger, more complex acquisitions. In addition to increasing the dollar amount of regulatory delegations thresholds, this interim rule strongly encourages agency Designated Senior Officials (DSO's) to redelegate a minimum of 25 percent of GSA's exclusive procurement authority for FIP resources to qualified officials at other levels, and changes the approving authority for exceptions to the use of GSA's consolidated local telecommunications service.

DATES: This amendment is effective immediately upon publication. Comments will be considered in the final rule, but must be received on or before February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Doris Farmer, GSA/MKR, FTS/Commercial (202) 501–0960 (v), Internet (doris.farmer@gsa.gov), or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) This interim rule enables GSA to focus on high dollar, high risk agency information technology acquisitions. It provides more authority to agencies, while continuing to require increased measures of accountability and outcomes. The increased authority allows agencies to further streamline their internal acquisition management and review functions. It also promotes improvements in early agency planning and analysis of business processes that may be improved through the use of information technology. (2) An explanation of the changes being made follows:

(a) Subsection 201–20.305(a) is amended to encourage DSO's to redelegate a minimum of 25 percent of the monetary value of GSA's delegated procurement authority to other qualified agency officials at lower organizational levels where sufficient expertise exists. Such redelegations will further expedite FIP acquisitions and provide for a more efficient process. DSO's who elect not to redelegate at least 25 percent, or who withdraw earlier delegations, must advise GSA in writing of the circumstances that will not allow redelegation and the management action being taken to allow such redelegation in the future. This change greatly increases the authority granted agencies in Interim Rule 2, which stated that agencies could only redelegate a *maximum* of 50 percent of their delegated authority.

(b) Subsection 201–20.305–1 is amended to establish a new regulatory delegation of procurement authority of $100 million for acquiring FIP resources without prior approval from GSA. This dollar threshold also applies to specific make and model requirements and requirements available from only one source.

(c) Subsection 201–24.102(c)(2) is amended to inform agencies to submit requests for exceptions to the use of consolidated local telecommunications service directly to the Federal Telecommunications Service (TT) for review.

(3) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review.

(4) The recordkeeping provisions of the Paperwork Reduction Act do not apply because the FIRMR changes do not impose information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 41 CFR Parts 201–20 and 201–24

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

For the reasons set forth in the preamble, GSA is amending 41 CFR Parts 201–20 and 201–24 as follows:

PART 201–20—ACQUISITION

1. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–20.305 is amended by revising paragraphs (a)(3) and (a)(5) as follows:

§ 201–20.305 Delegation of GSA's exclusive procurement authority.

* * * * *

(3) The agency's DSO should redelegate, at a minimum, 25 percent of the monetary value of GSA's delegated exclusive authorities for FIP resources to qualified officials possessing the expertise to conduct and manage FIP acquisitions.

* * * * *

(5) DSO's who elect not to redelegate at least 25 percent of the monetary value of the delegated authority, or who withdraw a delegation, shall advise GSA/MKA, 18th and F Streets, NW., Washington, DC 20405, in writing, of the circumstances involving such redelegations and their plan regarding redelegations within the agency.

* * * * *

3. Section 201–20.305–1 is amended by revising paragraphs (a)(1) introductory text and (a)(3) introductory text, as follows:

§ 201–20.305–1 Regulatory delegations.

(a) * * *

(1) FIP equipment, software, services, and support services when the total estimated dollar value of all of the FIP resources to be acquired under the contract, including all optional items and all option periods, does not exceed $100 million, and if either paragraph (a)(1) (i), (ii) or (iii) of this section applies:

* * * * *

(3) Use or acquisition of FIP resources from the following GSA contracting programs do not require delegations of procurement authority from GSA:

* * * * *

PART 201–24—GSA SERVICES AND ASSISTANCE

1. The authority citation for part 201–24 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–24.102 is amended by revising paragraph (c)(2) as follows:

§ 201–24.102 Consolidated local telecommunications service.

* * * * *

(c) * * *

(2) Agencies shall submit requests for exceptions to the use of consolidated

local telecommunications services to: GSA, Federal Telecommunications Service (TT), 1730 M Street, NW., Suite 200, Washington, DC 20036.

* * * * *

Dated: October 11, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 96–1140 Filed 1–26–96; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD–825–FCN]

RIN 0938–AG95

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction to final rule.

SUMMARY: In the September 1, 1995, issue of the Federal Register (60 FR 45778), we published a final rule with comment period revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In the addendum to that final rule with comment period, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs applicable to discharges occurring on or after October 1, 1995, and set forth update factors for the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This document corrects errors made in that document.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips (410) 786–4548.

SUPPLEMENTARY INFORMATION: In the September 1, 1995, final rule with comment period (60 FR 45778), we indicated that if a hospital believes its wage index value is incorrect as a result of an intermediary or HCFA error that the hospital could not have known about before reviewing data made available in mid-August, the hospital must notify the intermediary and HCFA in writing, to be received no later than September 21, 1995 (see 60 FR 45794). As a result of this process, we have identified several corrections to the wage data. Accordingly, the wage index values for several areas have changed and are corrected in this notice.

The final rule with comment period also contained other technical and typographical errors. In particular, we inadvertently failed to correct a technical error in § 412.105(d), which now indicates that the current method for determining the education adjustment factor for hospitals that incur indirect costs for graduate medical education (IME) programs is effective only for discharges occurring before October 1, 1995. Since section 4002(b)(3) of the Omnibus Budget Reconciliation Act of 1990 amended section 1886(d)(5)(B)(ii) of the Social Security Act to eliminate the requirement that the current method for calculating the IME adjustment was to expire as of October 1, 1995, we needed to delete the incorrect reference to the October 1, 1995, expiration date in our September 1, 1995, final rule with comment period.

Therefore, we are making the following corrections to the September 1, 1995, final rule with comment period:

§ 412.105 [Corrected]

1. On page 45848, column one, item 10, the phrase ''paragraph (b) is revised to read as follows:'' is corrected to read ''paragraphs (b) and (d) are revised to read as follows:''

2. On page 45848, column one, item 10, insert corrected paragraph (d), which reads as follows:

* * * * *

(d) *Determination of education adjustment factor.* For discharges occurring on or after October 1, 1988, each hospital's education adjustment factor is calculated as follows:

* * * * *

§ 413.40 [Corrected]

3. On page 45850, column one, § 413.40(g)(1), in the third line the phrase ''under paragraph (e) of this section'' is corrected to read ''under paragraph (g) of this section''.

4. On pages 45867 through 45882, in Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1994, Hospital Average Hourly Wage for Federal Fiscal Year 1996 Wage Index, the average hourly wage is corrected as follows:

Provider	Case mix index	Avg. hourly wage	Corrected avg. hourly wage
090004	01.6239	22.47	22.45
090005	01.2725	25.88	25.02
090008	01.5653	19.96	23.02
210003	01.5173	26.44	26.40
210005	01.1988	18.75	18.50
210008	01.3734	19.80	19.78
210026	01.3603	22.97	22.82
210060	01.0967	21.07	21.23
230002	01.2674	18.51	18.81
330023	01.1830	21.41	21.64
340039	01.2728	17.98	18.05
340064	01.2236	15.48	17.13
340098	01.6534	17.84	17.68
340166	01.3806	18.12	18.14
390174	01.7096	23.29	23.19
390226	01.7113	22.03	21.84
450025	01.4725	15.12	15.36
450029	01.4012	11.81	12.01
450121	01.5746	18.89	19.39
450196	01.4781	13.63	14.62

5. On pages 45883 through 45889, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the MSA titles and counties are corrected as follows:

MSA	Corrected MSA
1123 *Boston-Brockton-Nashua, MA–NH	*Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.
1960 Davenport-Rock Island-Moline, IA–IL	Davenport-Moline-Rock Island, IA–IL.
5483 *New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT.	*New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.
6483 *Providence-Warwick, RI	*Providence-Warwick-Pawtucket, RI.
7440 *San Juan-Bayamon, PR	Counties also include: Morovis, PR; Naguabo, PR.

6. On pages 45883 through 45889, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the wage index values and GAFs are corrected as follows:

	Urban area	Wage index	GAF	Changed wage index	Changed GAF
0720	Baltimore, MD	0.9866	0.9908	0.9865	0.9907
1520	Charlotte-Gastonia-Rock Hill, NC–SC	0.9668	0.9771	0.9661	0.9767
2160	Detroit, MI	1.0834	1.0564	1.0837	1.0566
2281	Dutchess Co., NY	1.0697	1.0472	1.0754	1.0510
2800	Fort Worth-Arlington, TX	1.0052	1.0036	1.0066	1.0045
3290	Hickory-Morganton-Lenoir, NC	0.7983	0.8570	0.8002	0.8584
4080	Laredo, TX	0.6750	0.7640	0.6834	0.7705
4640	Lynchburg, VA	0.8205	0.8733	0.8319	0.8816
6160	Philadelphia, PA–NJ	1.1098	1.0739	1.1092	1.0736
8840	Washington, DC–MD–VA–WV	1.1075	1.0724	1.1116	1.0751
9080	Wichita Falls, TX	0.7763	0.8408	0.7826	0.8455

7. On pages 45889 through 45890, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas, the wage index values and the GAFs are corrected as follows:

Non-urban Area	Wage index	GAF	Changed wage index	Changed GAF
North Carolina	0.7983	0.8570	0.8002	0.8584
Texas	0.7302	0.8063	0.7316	0.8073

8. On pages 45890 through 45891, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, the wage index values and the GAFs are corrected as follows:

Area reclassified to	Wage index	GAF	Changed wage index	Changed GAF
Charlotte-Gastonia-Rock Hill, NC-SC	0.9668	0.9771	0.9661	0.9767
Detroit, MI	1.0834	1.0564	1.0837	1.0566
Dutchess Co., NY	1.0546	1.0371	1.0583	1.0396
Fort Worth-Arlington, TX	1.0052	1.0036	1.0066	1.0045
Philadelphia, PA-NJ	1.1098	1.0739	1.1092	1.0736
Washington, DC-MD-VA-WV	1.1075	1.0724	1.1116	1.0751
Rural North Carolina	0.7983	0.8570	0.8002	0.8584

9. On pages 45891 through 45892, in Table 4D—Average Hourly Wage for Urban Areas, the average hourly wage is corrected as follows:

Urban area	Average hourly wage	Corrected average hourly wage
Baltimore, MD	18.6758	18.6732
Charlotte-Gastonia-Rock Hill, NC-SC	18.3004	18.2886
Detroit, MI	20.4975	20.5027
Dutchess Co., NY	20.2495	20.3568
Fort Worth-Arlington, TX	19.0148	19.0420
Laredo, TX	12.7772	12.9369
Lynchburg, VA	15.5313	15.7477
Philadelphia, PA-NJ	21.0452	21.0345

Urban area	Average hourly wage	Corrected average hourly wage
Washington, DC-MD-VA-WV	20.9642	21.0413
Wichita Falls, TX	14.6944	14.8144

10. On pages 45892 through 45893, in Table 4E—Average Hourly Wage for Rural Areas, the average hourly wage is corrected as follows:

Urban area	Average hourly wage	Corrected average hourly wage
North Carolina	15.1058	15.1415
Texas	13.8226	13.8482

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: December 7, 1995.

Michael Carleton,

Acting Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 96–1532 Filed 1–26–96; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 95–2199]

Reorganization Action Necessary To Create the Office of Workplace Diversity

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment to the Commission's Rules establishes the Office of Workplace Diversity to administer the Commission's Internal Equal Opportunity Program, formerly administered by the Office of the Managing Director, Associate Managing Director for Human Resources Management. This action is taken to streamline operations and improve efficiency.

FOR FURTHER INFORMATION CONTACT: Harvey Lee at (202) 776–1887.

EFFECTIVE DATE: January 29, 1996.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 13, 1995
Released: January 18, 1996

By the Managing Director:

1. On October 16, 1994, the Commission adopted a proposed reorganization the purpose of which was to establish the Office of Workplace Diversity to administer the Commission's internal Equal Opportunity Program. This program was previously administered by the Office of the Managing Director, Associate Managing for Human Resources Management. The implementation of the proposed reorganization requires amendment to Part 0 of the Commission's Rules and Regulations. In accordance with the Commission's action, this Order makes necessary revisions in Part 0 of the Commission's Rules.

2. The amendments adopted herein pertain to agency organization. Therefore, the notice and comment and effective date provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. § 553, are inapplicable. Authority for the amendments is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. Accordingly, it is ordered, pursuant to the authority delegated under 47 C.F.R. § 0.231(d) and effective upon publication in the Federal Register, that Part 0 of the Rules and Regulations be amended as set forth below.

List of Subjects in 47 CFR Part 0

Authority delegated, organization and functions (Government agencies).

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Final Rules

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. A new centered heading and a new Section 0.81 is added to Subpart A to read as follows:

Office of Workplace Diversity

§ 0.81 Functions of the Office.

(a) The Office of Workplace Diversity (OWD), as a staff office to the Commission, shall develop, coordinate, evaluate, and recommend to the Commission policies, programs, and practices that foster a diverse workforce and promote and ensure equal opportunity for all employees and applicants for employment. A principal function of the Office is to lead, advise, and assist the Commission, including all of its component Bureau/Office managers, supervisors, and staff, at all levels, on ways to promote inclusion and full participation of all employees in pursuit of the Commission's mission. In accordance with this function, the Office shall:

(1) Conduct independent analyses of the Commission's policies and practices to ensure that those policies and practices foster diversity in the workplace and ensure equal opportunity and equal treatment for employees and applicants; and

(2) Advise the Commission, Bureaus, and Offices of their responsibilities under Title VII of the Civil Rights Act of 1964, as amended; Section 501 of the Rehabilitation Act of 1973, as amended; Age Discrimination in Employment Act of 1967, as amended; Executive Order 11478; and all other statutes, Executive Orders, and regulatory provisions relating to workplace diversity, equal employment opportunity, nondiscrimination, and civil rights.

(b) The Office has the following duties and responsibilities:

(1) Through its Director, serves as the principal advisor to the Chairman and Commission officials on all aspects of workplace diversity, affirmative recruitment, equal employment

opportunity, non-discrimination, and civil rights;

(2) Provides leadership and guidance to create a work environment that values and encourages diversity in the workplace;

(3) Is responsible for developing, implementing, and evaluating programs and policies to foster a workplace whose diversity reflects the diverse makeup of the Nation, enhances the mission of the Commission, and demonstrates the value and effectiveness of a diverse workforce;

(4) Is responsible for developing, implementing, and evaluating programs and policies that promote understanding among members of the Commission's workforce of their differences and the value of those differences and provide a channel for communication among diverse members of the workforce at all levels;

(5) Develops, implements, and evaluates programs and policies to ensure that all members of the Commission's workforce and candidates for employment have equal access to opportunities for employment, career growth, training, and development and are protected from discrimination and harassment;

(6) Develops and recommends Commission-wide workforce diversity goals and reports on achievements;

(7) Is responsible for developing, implementing, and evaluating programs and policies to enable all Bureaus and Offices to manage a diverse workforce effectively and in compliance with all equal employment opportunity and civil rights requirements;

(8) Works closely with the Associate Managing Director—Human Resources Management to ensure compliance with Federal and Commission recruitment and staffing requirements;

(9) Manages the Commission's equal employment opportunity compliance program. Responsibilities in this area include processing complaints alleging discrimination, recommending to the Chairman final decisions on EEO complaints within the Commission, and providing counseling services to employees and applicants on EEO matters;

(10) Develops and administers the Commission's program of accessibility and accommodation for disabled persons in accordance with applicable regulations;

(11) Represents the Commission at meeting with other public and private groups and organizations on matters counseling workplace diversity and equal employment opportunity and workplace diversity issues;

(12) Maintains liaison with and solicits views of organizations within and outside the Commission on matters relating to equal opportunity and workplace diversity.

3. A new centered heading and a new Section 0.391 is added to Subpart B to read as follows:

Office of Workplace Diversity

§ 0.391 Authority delegated.

The Director, Office of Workplace Diversity, or his/her designee, is hereby delegated authority to:

(a) Manage the Commission's internal EEO compliance program pursuant to Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Equal Pay Act, and other applicable laws, rules, regulations, and Executive Orders, with authority that includes appointing EEO counselors, investigators, and mediators; investigating complaints of employment discrimination, and recommending to the Chairman final agency decisions on EEO complaints;

(b) Mediate EEO complaints;

(c) Develop the Commission's affirmative action goals and objectives;

(d) Collect and analyze data on the Commission's affirmative action and EEO activities and accomplishments;

(e) Prepare and release reports on EEO, affirmative action, workplace diversity, and related subjects;

(f) Review personnel activities, including hiring, promotions, discipline, training, awards, and performance recognition for conformance with EEO and workplace diversity goals, objectives and requirements;

(g) Conduct studies and collect data on workplace diversity issues and problems;

(h) Assume representational role on behalf of the Commission at conferences, meetings, and negotiations on EEO and workplace diversity issues;

(i) Develop programs and strategies designed to foster and encourage fairness, equality, and inclusion of all employees in the workforce.

[FR Doc. 96–1419 Filed 1–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–5260–02; I.D. 012396A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast sub-zone to 50 king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: The 50–fish commercial trip limit is effective 12:01 a.m., local time, January 24, 1996, and remains in effect through June 30, 1996, unless changed by further notification in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and vessels using hook- and line gear.

In accordance with 50 CFR 642.28(b)(2)(ii), from the date that 75 percent of the sub-zone's commercial quota has been harvested until a closure of the Florida west coast sub-zone has

been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 50 per day.

NMFS has determined that 75 percent of the commercial hook-and-line quota for Gulf group king mackerel from the Florida west coast sub-zone was reached on January 23, 1996. Accordingly, a 50–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast sub-zone effective 12:01 a.m., local time, January 24, 1996.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) The Dade/Monroe County, FL boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, FL boundary (25°48′ N. lat.) from April 1 through October 31.

Classification

This action is taken under 50 CFR 642.28(c) and is exempt from review under E.O. 12866.

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

Dated: January 23, 1996.

Richard W. Surdi,

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

[FR Doc. 96–1484 Filed 1–23–96; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 19
Monday, January 29, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–162–AD]

Airworthiness Directives; Boeing Model 747–200, -300, and -400 Series Airplanes Equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC Engines, and Pratt & Whitney Model PW4000 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that currently requires inspection of each fuel feed line of the outboard engine in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and repair or replacement of the fuel feed tube, if necessary. That AD also currently requires inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp, if necessary. This action would require modification of the upper gap area of the strut of the number 1 and 4 engines. This proposal is prompted by a report of fuel leakage in the strut of the number 4 engine due to a high profile clamp that chafed the fuel line. The actions specified by the proposed AD are intended to prevent chafing of the fuel line in the strut of the number 1 and 4 engines, which could result in rupture of the fuel line and subsequent in-flight engine fire.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–162–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 5, 1991, the FAA issued AD 91–05–19, amendment 39–6918 (56 FR 8705, March 1, 1991), applicable to certain Boeing Model 747–200, –300, –400 series airplanes equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC engines, and Pratt & Whitney Model PW4000 engines. That AD currently requires inspection of each fuel feed line of the outboard engine in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage to the fuel feed tube; and repair or replacement of the fuel feed tube, if necessary. That AD also currently requires inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp if a non-rotating clamp is not already installed. That action was prompted by report of a fuel leak in the number 4 engine strut due to a punctured fuel feed line that had chafed as a result of contact with a clamp. The requirements of that AD are intended to prevent an engine fire.

Since the issuance of that AD, the FAA has received a report of fuel leakage in the strut of the number 4 engine. Investigation revealed that the fuel leakage was caused by a punctured fuel feed tube; the fuel tube was punctured as a result of chafing with the high profile duct clamp. Further investigation revealed that the high profile duct clamp, which was lockwired to the anchor clamp, was installed in accordance with the requirements of AD 91–05–19. Due to failure of the lockwire, the high profile clamp rotated and chafed the fuel line in the strut of the number 4 engine. This condition, if not corrected, could result in rupture of the fuel line and a subsequent in-flight engine fire.

The FAA has reviewed and approved Service Bulletin 747–36A2097, Revision 3, dated September 28, 1995, which describes procedures for modification of the upper gap area of the strut of the number 1 and 4 engines. The modification involves an inspection to detect chafing or puncture marks of the fuel line, and replacement or repair of the chafed or punctured fuel line. The

modification also involves replacement of the high profile clamp on the flap drive pneumatic duct with a low profile clamp, and removal of the anchor clamp, if installed. Accomplishment of this modification will eliminate chafing of the fuel line in the strut of the number 1 and 4 engines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–05–19 to require modification of the upper gap area of the strut of the number 1 and 4 engines. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 363 Boeing Model 747–200, –300, –400 series airplanes equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC engines, and Pratt & Whitney Model PW4000 engines of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $14,040, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6918 (56 FR 8705, March 1, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–162–AD. Supersedes AD 91–05–19, Amendment 39–6918.

Applicability: Model 747–200, –300, and –400 series airplanes having line positions 679 through 1041 inclusive; equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC, and Pratt & Whitney Model PW4000 engines; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel line in the strut of the number 1 and 4 engines, which could result in rupture of the fuel line and subsequent in-flight engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the upper gap area of the strut of the number 1 and 4 engines, in accordance with Boeing Service Bulletin 747–36A2097, Revision 3, dated September 28, 1995.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on January 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1570 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANM–29]

Proposed amendment to Class D and Class E airspace, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Hailey, Idaho, Class D and Class E airspace. If amended, the airspace would accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Friedman Memorial Airport, Hailey, Idaho. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–29, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Frala, ANM–535/A, Federal

Aviation Administration, Docket No. 95–ANM–29, Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–29.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above 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 NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D and Class E airspace at Hailey, Idaho, to accommodate a new GPS SIAP at Friedman Memorial Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas extending upward from the surface of the earth, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 5000 and paragraph 6005, respectively, 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 D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 15, 1995, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ANM ID D Hailey, ID [Revised]

Friedman Memorial Airport, Hailey, ID
(lat. 43°30′17″ N, long. 114°17′48″ W)

That airspace extending upward from the surface to, and including 7,800 feet MSL within a 4.1-mile radius of the Friedman Memorial Airport, and that airspace within 1.8 miles each side of the 159° bearing from the airport, extending from the 4.1-mile radius to 6 miles southeast of the airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM ID E5 Hailey, ID [Revised]

Friedman Memorial Airport, Hailey, ID
(lat. 43°30′17″ N, long. 114°17′48″ W)
M–SUN MLS
(lat. 43°30′02″ N, long. 114°17′37″ W)

That airspace extending upward from 700 feet above the surface within 1.8 miles each side of the M–SUN MLS 328° azimuth, from 7.4 miles northwest to 4.3 miles southeast of the M–SUN MLS, and 1.8 miles each side of the 159° bearing from the airport, extending from the airport to 7.6 miles southeast of the airport; that airspace extending upward from 1,200 feet above the surface, within 3.5 miles each side of the M–SUN MLS 328° azimuth, from 15.7 miles northwest to the M–SUN MLS, and that airspace from lat. 43°36′00″ N, long. 114°27′03″ W, thence eastbound to lat. 43°36′00″ N, long. 114°00′03″ W, thence southbound to lat. 43°17′30″ N, long. 114°03′03″ W, thence westbound to lat. 43°17′30″ N, long. 114°27′03″ W, thence northbound to the point of beginning; excluding that airspace overlying V–231 on the east side and V–500 on the south side.

* * * * *

Issued in Seattle, Washington, on January 5, 1996.

Richard E. Prang,

Acting Assistant Management, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–1435 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

January 19, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; extension of time for comments on Draft Environmental Impact Statement (DEIS).

SUMMARY: On November 17, 1995, the staff of the Federal Energy Regulatory Commission issued a draft environmental impact statement for the proposed rule in this proceeding (60 FR 58304, November 27, 1995). On January 3, 1996, an extension of time for the filing of comments on the DEIS was granted because certain departments and agencies of the Federal government were closed for all but emergency matters due to a lack of appropriated funds.

DATES: Comments by all parties shall be filed on or before February 2, 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Bill Meroney, Office of Economic Policy, (202) 208–1069.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1530 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 601

[Docket No. 95N–0411]

RIN 0910–AA68

Well-Characterized Biotechnology Products; Elimination of Establishment License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to eliminate the establishment license application (ELA) requirement for well-characterized biotechnology products licensed under the Public Health Service Act (PHS Act). The proposed rule would also exempt well-characterized biotechnology products licensed under the PHS Act from certain biologics regulations and harmonize the requirements applicable to these products with those applicable to similar drug products which are approved under the Federal Food, Drug, and Cosmetic Act (the act).

This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives, and it is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments on this proposed rule by February 28, 1996. Submit written comments on the information collection requirements by February 28, 1996, but not later than March 29, 1996. The agency proposes that any final rule that may issue based on this proposal become effective upon its date of publication in the Federal Register.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tracey H. Forfa, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION

I. Background

In the Federal Register of December 8, 1995 (60 FR 63048), the agency announced its interim definition of a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology product, as follows:

A chemical entity(ies) whose identity, purity, impurities, potency, and quantity can be determined and controlled.

Identity:

a. *Recombinant DNA Biotechnology Products*

The primary structure is known (i.e., amino acid sequence), and

The secondary structure is known (e.g. disulfide linkage), and

Post-translational modifications are known (e.g., glycosylation), or

b. *Monoclonal Antibodies*

The identity can be determined by rigorous physicochemical and immunochemical characterization without fully knowing its chemical structure.

Purity and impurities:

The purity is quantifiable.

The impurities are quantifiable, and identified if feasible.

Potency and quantity:

The biological activity is measurable.

The quantity is measurable.

A well-characterized therapeutic recombinant DNA-derived and monoclonal antibody product requires proper raw material controls, process validation and controls, and sensitive and validated test methods and specifications.

As announced in the Federal Register of October 25, 1995 (60 FR 54695), FDA held a scientific workshop on December 11, 12, and 13, 1995, to discuss the definition of a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody product and to identify the information necessary to characterize such products. FDA intends to consider information received at the workshop, as well as comments received in response to this proposed rule, to determine whether the definition previously given in this document should be expanded to include other categories of products that would be considered to be well-characterized, such as certain vaccines and biologic devices, e.g., test kits for screening blood.

FDA is proposing to use the phrase ''well-characterized biotechnology product,'' to describe the products that would be eligible for a single license application so that the regulatory language would accommodate such additional categories of products. FDA has not included a definition of a well-characterized biotechnology product in the proposed regulations because the agency intends to clarify the definition in a guidance document that can be more readily modified to reflect changes that may be warranted as scientific knowledge progresses. FDA specifically invites public comment on whether a definition of a well-characterized biotechnology product should be included in the regulations and, if so, what the scope of such a definition should be.

Well-characterized therapeutic recombinant DNA-derived and monoclonal antibody products that are viruses, therapeutic sera, toxins, antitoxins, vaccines, blood, blood components or derivatives, allergenic products, or analogous products applicable to the prevention, treatment, or cure of human diseases or injuries are ''biologics'' within the meaning of

section 351 of the PHS Act (42 U.S.C. 262). They are also ''drugs'' as the term is defined in section 201(g) of the act (21 U.S.C. 321(g)). Additional well-characterized biotechnology products identified in the future may be ''devices'' as defined in section 201(h) of the act (21 U.S.C. 321(h)). Therefore, such products are subject to the provisions of the act applicable to drugs and/or devices, including, but not limited to, the adulteration and misbranding provisions (21 U.S.C. 351 and 352).

At the present time, these products are regulated by either FDA's Center for Biologics Evaluation and Research (CBER) or Center for Drug Evaluation and Research (CDER). CBER and CDER have entered into an intercenter agreement announced in the Federal Register of November 21, 1991 (56 FR 58760), with respect to the regulation of drugs and biological products. The intercenter agreement assigns jurisdiction to CBER or CDER based on product class. A product class is defined as a distinct category of agents recognizable by physical characteristics, source materials, or pharmacologic properties. Examples of product classes include: antibiotics, vaccines, hormones, and human blood derivatives. Under the agreement, some well-characterized biotechnology products, such as recombinant insulin and human growth hormone, are assigned to CDER, while other similar recombinant products, such as erythropoietin, colony stimulating factor, and interferon, are assigned to CBER.

Currently, when approved under the PHS Act as biological products, well-characterized biotechnology products are reviewed like any other biologic; that is, both a product license application (PLA) and an ELA are submitted to and approved by FDA before the well-characterized biotechnology product may be shipped. When approved under the act as a drug product, a well-characterized biotechnology product must have an approved new drug application (NDA) in place of a PLA and ELA. Much of the information provided in a PLA is similar to that included in an NDA. Some of the information provided in an ELA is included in the chemistry, manufacturing and controls section of the NDA (see § 314.50(d)(1)(21 CFR 314.50(d)(1))); however, much of the information concerning the manufacturing facility that is included in an ELA is not included in an NDA.

Technical advances over the last 15 years have greatly increased the ability of manufacturers to control and analyze the manufacture of many biotechnology-derived biological products. After over a decade of experience with these products, the agency has found that it can review the safety, purity, potency, and effectiveness of most well-characterized biotechnology products without requiring submission of a separate ELA. Accordingly, FDA is proposing procedures under which CBER would approve well-characterized biotechnology products by requiring a single biologics license application. CDER would continue to approve NDA's for well-characterized biotechnology products. The single biologics license application and the NDA would have an identical format and include the same information. FDA would continue to inspect manufacturing facilities for compliance with good manufacturing practice requirements before approving either a biologics license application or NDA.

FDA has determined that the review standards for well-characterized biotechnology products across the agency are substantially identical, notwithstanding that such standards may be specified in separate regulations, but the manner in which information is submitted to FDA is more burdensome when done through the ELA mechanism. Accordingly, the agency believes that the proposed procedures will significantly reduce burdens without reducing the safety or effectiveness of these products.

II. Legal Authority

This proposal would establish a licensing scheme for well-characterized biotechnology products that differs from the current licensing scheme in four fundamental ways. First, an applicant seeking marketing approval of a well-characterized biotechnology product would submit a single biologics license application to CBER and be issued a single license. Second, for these products, many of the establishment standards set forth in part 600 (21 CFR part 600) would be exempted from applicability and the current good manufacturing practice requirements found at parts 210 and 211 (21 CFR parts 210 and 211) would constitute the bulk of the applicable establishment standards. Some of the product standards set forth in part 610 (21 CFR part 610) would also be eliminated for these products. Third, in lieu of submitting an ELA to CBER showing compliance with establishment standards, FDA would evaluate whether establishment standards had been met by reviewing information submitted in the biologics license application and by inspecting the facilities in which the product is manufactured. Fourth, the term ''manufacturer'' as it is used in parts 600 through 680 (21 CFR parts 600 through 680) would be broadened to include an applicant for a license for a well-characterized biotechnology product who may or may not own the facilities engaged in significant production steps. This would allow a single license applicant to take responsibility for compliance with the requirements in parts 600 through 680 applicable to manufacturers and eliminate the requirement that each separate contract facility engaging in significant manufacturing obtain a separate license.

These licensing procedures for well-characterized biotechnology-derived biological products are authorized by section 351 of the PHS Act. The proposed rule would establish an administrative approach to enforce the requirements in sections 351(a) and (d) of the PHS Act appropriate for current scientific and technological methods applied in the manufacture of these products.

FDA's current regulations to administer and enforce the statutory requirements embody a dual licensing scheme: Applicants must submit to CBER an ELA and a PLA and obtain agency approval of both applications before they may distribute a biological product. Parts 600 through 680 set out establishment and product standards that applicants must meet before FDA issues an establishment or product license. However, a dual licensing scheme is not compelled by the PHS Act.

Section 351(a) of the PHS Act restricts the interstate sale, barter, and exchange of biologics to products manufactured in establishments that have been licensed. Section 351(a) requires that a biologic product be ''propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license.'' Section 351(d) authorizes the agency to prescribe regulations for the issuance, suspension, and revocation of licenses: ''Licenses for the maintenance of establishments for the propagation or manufacture and preparation of [biological] products * * * may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations, and licenses for new products may be issued only upon a showing that they meet such standards.'' The sole limitation on the agency's discretion to issue biologic licenses is that licenses may only be

issued upon a showing that both the establishment in which the product is prepared and the product meet regulatory standards designed to insure the continued safety, purity, and potency of such products.

The PHS Act does not prescribe requirements for the format or content of license applications. Nor does it direct that there be two forms of license. The clear import of section 351(a) is that the entity responsible for the product and its manufacture should be licensed.

The agency believes that the single biologics license application scheme that FDA is proposing for well-characterized biotechnology products is authorized by the PHS Act because licenses would continue to be issued only after the agency has made a determination that the product and the establishment(s) in which it is manufactured meet applicable regulatory standards. FDA would make its determination as to whether the product and establishment(s) meet applicable regulatory standards after reviewing the information submitted in the biologics license application and after inspecting the manufacturing facilities.

FDA believes that a license holder need not be the legal owner of each facility in which the product is manufactured as long as he or she is responsible for assuring FDA that the product and establishment standards are met. Accordingly, the proposed rule would permit a single license holder to assume control of the production of a well-characterized biotechnology product regardless of whether he or she owns the manufacturing facilities.

FDA also believes that its administrative approach to enforcing the PHS Act can and should change to respond to changing knowledge and experience in reviewing the safety, purity, and potency of biological products.

III. Summary of Proposed Rule

A. Biologics License Application.

The proposed rule would be applicable to applicants seeking marketing approval of well-characterized biotechnology products that are currently licensed under the provisions of the PHS Act.

In an effort to further harmonize the manner in which well-characterized biotechnology products are regulated, the agency is proposing in new § 601.2(c) to eliminate the requirement for a separate ELA for well-characterized biotechnology products licensed under the PHS Act. This proposed regulation would require that an applicant seeking marketing approval of a well-characterized biotechnology product file a single application on a form prescribed by CBER. The form will include a section that is the same as the chemistry, manufacturing, and controls (CMC) section found in an NDA. (See § 314.50(d)(1)). CBER and CDER have prepared a draft form that has been made available for comment. This draft form may be used in the interim until a final form is available. Both CBER and CDER intend to prepare and use the same guidance documents to aid in the preparation of the chemistry, manufacturing, and controls section of an application for a well-characterized biotechnology product. FDA intends that this guidance will be made available to the public by the time of issuance of any final rule resulting from this proposal.

The CMC section of a license application for a well-characterized biotechnology product, like an NDA for a well-characterized biotechnology product, would include the following elements, at a minimum: A full description and characterization of the well-characterized biotechnology product; the names, addresses, and responsibilities of all manufacturers involved in the manufacture and testing of the product; the method of manufacture, including raw materials, solvents, and reagents; process controls and tests; reference standards; specifications and analytical methods; a description of the container and closure system and its compatibility with the well-characterized biotechnology product drug substance; a description of the storage conditions, stability study protocols, and results; a tabulated list of all components; specifications and methods for the drug product's ingredients; methods of manufacturing and packaging of the well-characterized drug product including a floor plan which designates rooms in the manufacturing facilities and operations in each room; specifications and methods for the drug product; any microbiology and drug product stability data; description of any investigational formulation; environmental assessment and method validation.

This proposal would also expand the definition in § 600.3(t) of ''manufacturer'' to include a license applicant for a well-characterized biotechnology product regardless of whether the applicant is personally engaged in significant manufacturing steps.

These proposed changes would facilitate a company's ability to contract out manufacture of its well-characterized biotechnology products. The proposed rule would eliminate the requirement that each separate contract facility engaging in significant production steps submit an ELA and a PLA. Instead, a well-characterized biotechnology product would be covered by a single biologics license application, which lists all manufacturing locations, regardless of how many separate companies are involved in its manufacture. FDA is seeking comment on whether the definition of ''manufacturer'' in § 600.3(t) should also be expanded to include license applicants for products other than well-characterized biotechnology products.

B. Good Manufacturing Practice Requirements.

The establishment standards for well-characterized biotechnology products would continue to include the CGMP regulations found in parts 210 and 211 (21 CFR parts 210 and 211). FDA would review compliance with good manufacturing practice requirements upon inspection and applicants would be required to demonstrate such compliance in order to obtain approval of a biologics license application.

Should well-characterized devices licensed under the PHS Act be identified and be eligible for the new procedures, applicable CGMP regulations would include parts 606 and 820 (21 CFR parts 606 and 820) (for blood and blood components). FDA requests comments on whether a specific reference to part 820 should be included in the rule.

Under section 501(a)(2)(B) of the act, the methods used in, and the facilities or controls used for the manufacture, processing, packing, or holding of a drug must conform to current good manufacturing practice. Because the bulk drug substance, drug component, and bulk drug product meet the definition of ''drug'' in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)), their manufacture also must conform to good manufacturing practice. The CGMP regulations set forth in parts 210 and 211 are intended to apply to the preparation of a finished dosage form, whether or not in packaged form. (See § § 210.3(b)(4) and 211.1(a).) Although these CGMP regulations are not applied to the manufacture of bulk drug components, there are numerous instances where good manufacturing practice for bulk drug substances and bulk drug product components would parallel the requirements set forth in part 211. (See 43 FR 45076.) Because well-characterized biotechnology products can be susceptible to contamination, adequate control over

bulk manufacturing is important. FDA intends to use the standards of part 211 as guidelines during inspections of manufacturers of bulk drug substance and bulk drug product components, under the jurisdiction of the act, to help ensure that a well-characterized biotechnology product will have the proper raw materials controls, process validation and controls, and sensitive and validated test methods and specifications that are necessary to assure the safety, purity, potency, and effectiveness of the product.

C. Applicability of Current Regulations (Parts 600–680).

In order to harmonize the regulatory standards applied by CBER and CDER in their review of applications for well-characterized biotechnology products, FDA is proposing to exempt well-characterized biotechnology products licensed under the PHS Act from certain requirements found in parts 600 through 680. The regulations that have not been excluded in this proposed rule are those that FDA believes are necessary to ensure the safety, purity, and potency of well-characterized biotechnology products; are essentially the same as those found in comparable regulations governing drug products; may not be applicable by their terms to well-characterized biotechnology products; or are ones that are targeted for revision. FDA requests comments on whether well-characterized biotechnology products should be exempted from requirements in parts 600 through 680 not identified for exclusion in this proposal, or whether certain regulations exempted in this proposed rule should remain applicable. FDA also requests comments on whether well-characterized devices licensed under the PHS Act, should such products be identified, would need to be exempted from the same or different requirements in parts 600 through 680.

The following lists set forth those provisions that FDA proposes would remain applicable, those that FDA proposes to exempt from applicability to well-characterized biotechnology products, and those that would not be applicable by their terms to well-characterized biotechnology products.

The following sections would remain applicable to well-characterized biotechnology products: § § 600.3, 600.10(a), 600.14, 600.20, 600.21, 600.22, 600.80, 600.81, 600.90, 601.2, 601.3(b), 601.4, 601.5, 601.6, 601.7, 601.8, 601.9, 601.12, 601.20, 601.21, 601.22, 601.33, 601.40, 601.41, 601.42, 601.43, 601.44, 601.45, 601.46, 601.50, 601.51, 610.1, 610.2 (Lot-by-lot release eliminated for licensed well-characterized therapeutic recombinant DNA-derived and monoclonal antibody products per letters to manufacturers and notice in the Federal Register of December 8, 1995, (60 FR 63048.)), 610.9, 610.10, 610.11a, 610.12 (Equivalent methods or processes possible under § 610.9.), 610.13, 610.14, 610.15, 610.17, 610.18, 610.30, 610.40, 610.41, 610.45 (Sections 610.40 through 610.45 apply to blood and blood components used in the manufacture of a well-characterized biotechnology product.), 610.50, 610.60, 610.61, 610.63, 610.64, 610.65, and parts 606 (potential applicability to blood and blood components only); 640 (potential applicability to blood and blood products only); and 680 (would apply only to a well-characterized biotechnology allergenic product).

The following sections would be exempted from applicability to well-characterized biotechnology products: §§ 600.10(b) and (c), 600.11, 600.12, 600.13, 601.1, 601.30, 601.31, 601.32, 610.11, 610.53, and 610.62.

The following sections by their terms would not be applicable to well-characterized biotechnology products: §§ 600.15, 601.3(a), 601.10, 601.25, 601.26, 610.16, 610.19, 610.20, 610.21, and parts 607, 620, 630, 650, and 660.

FDA is proposing to exempt well-characterized biotechnology products from the requirements of § 610.11, which sets out procedures for a general safety test for biological products. FDA believes that a general safety test requirement is not necessary to ensure the safety, purity, and potency of a well-characterized biotechnology product. With in-process control and process validation and product testing, the identity of the well-characterized biotechnology product can be determined, its purity can be controlled and quantified, its activity and quantity can be measured, and the end-product release specifications can be validated. The agency believes that specific analytical tests that are available for these products will provide a better assessment of safety than the general safety test.

FDA is also proposing to exempt well-characterized biotechnology products from § 610.62, which sets out requirements for position and prominence of the proper name of the product on the package label. FDA believes that the requirements in § 201.10(g) are adequate to assure the appropriate identification of these products.

D. Transition Issues.

Any well-characterized biotechnology product for which a PLA and an ELA are pending on the effective date of these regulations would be reviewed as submitted. No new submission would be necessary to implement this rule change for these products. If found acceptable for licensure, FDA would issue a biologics license in lieu of issuing both a product and establishment license. Any company planning to file a PLA or an ELA prior to April 1996 should contact the agency for guidance. FDA specifically asks for comments on how transition issues should be handled.

FDA anticipates that applicants already holding an approved ELA and PLA for a well-characterized biotechnology product would not be required to file supplements to comply with the new requirements. The approved PLA for a well-characterized biotechnology product, together with the limited portions of the approved ELA relevant to the new requirements for the biologics license application, would be deemed to constitute an approved biologics license application under the new regulations.

IV. Proposed Effective Date

FDA proposes that a final rule resulting from this proposal become effective upon its date of publication in the Federal Register. As provided under 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4), the effective date of a final rule may not be less than 30 days after publication, except for, among other things, ''a regulation that grants an exemption or relieves a restriction'' (§ 10.40(c)(4)(i)). Because, as described below, this rule would decrease the regulatory burdens for well-characterized biotechnology products, FDA believes that an immediate effective date is appropriate.

V. Analysis of Impacts

A. Reduction in Burden

The proposed harmonization of the requirements would reduce burden on industry because companies manufacturing well-characterized biotechnology products that are regulated by both CBER and CDER would be able to submit applications for products in a consistent format.

Companies developing and manufacturing well-characterized biotechnology products regulated by CBER would no longer have to prepare an ELA to submit to the agency for approval. The amount of information that applicants would need to provide in a biologics license application would be less than that currently required in a PLA and ELA. These proposed changes would enable companies to devote more resources to ensuring that

manufacturing processes are properly validated and fewer resources to submitting documentation to the agency. These changes would especially benefit biotechnology companies that lack experience preparing ELA's and PLA's. According to the biotechnology industry, preparation and submission of an ELA may add substantially to the cost of obtaining approval of a well-characterized biotechnology product.

The inclusion of parts 210 and 211 in the proposed rule as establishment standards would not impose any additional burden on industry. Human drugs, including well-characterized biotechnology products, are already subject to the CGMP's in parts 210 and 211.

B. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the overall result of the proposed rule would be a substantial reduction in burdens on applicants filing for approval of a well-characterized biotechnology product. In addition, FDA anticipates that the proposed rule would facilitate applicants' ability to improve their licensed products and methods of manufacture by decreasing the burden and cost associated with filing an application.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because, as stated previously, the overall result of the proposed rule would be a substantial reduction of the regulatory and reporting burdens, the agency certifies that the proposed rule would not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Review Under the Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Well-characterized Biotechnology Products; Elimination of Establishment License Application.

Description: FDA is proposing to eliminate the requirement that an ELA be submitted and approved by FDA for those well-characterized biotechnology products that are licensed by CBER. For these products, in place of the ELA, a company would be required to prepare and submit additional information for inclusion in a single biologics license application, which would be the same as the information included in the ''Chemistry, manufacturing, and controls'' (CMC) section of a NDA. This proposed regulation would harmonize the approval and other regulatory requirements for all well-characterized biotechnology product under the PHS Act or approved as a drug under the new drug provisions of the act.

Description of Respondents: All applicants for a biological product license to be approved under the Public Health Service Act.

Estimated Annual Reporting Burden

CFR Section	Number of Respondents	Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
601.2(c)	1	1	1	40	40

Reporting or Disclosure: These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to FDA. There are no capital costs or operating and maintenance costs associated with this information collection. The number of respondents is dependent in part, on the definition of ''well-characterized biotechnology products,'' now under review by the agency. At the present time, FDA estimates the number of respondents at one a year. The agency seeks comment on these estimates, particularly the industry's view of the number of firms and products affected by the collections of information requirements contained in this proposed rule.

The agency has submitted a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send

comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Submit written comments on the information collection by February 28, 1996 but not later than March 29, 1996.

D. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

Interested persons may, on or before February 28, 1996, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Two copies of all comments are to be submitted, except that individuals may submit one copy. The comments received are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Submit written comments on the information collection requirements to the Office of Information and Regulatory Management, OMB (address above).

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 600 and 601 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

3. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

4. Section 600.3 is amended by revising paragraph (t) to read as follows:

§ 600.3 Definitions.

* * * * *

(t) *Manufacturer* means any legal person or entity engaged in the manufacture of a product subject to license under the act; ''Manufacturer'' also includes an applicant for a license for a well-characterized biotechnology product.

* * * * *

PART 601—LICENSING

5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

6. Section 601.2 is amended by adding a sentence at the end of paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * In lieu of the procedures described in this paragraph, applications for well-characterized biotechnology products shall be handled as set forth in paragraph (c) of this section.

* * * * *

(c) *Well-characterized biotechnology products.* (1) To obtain marketing approval for a well-characterized biotechnology product, an applicant shall submit to the Director, Center for Biologics Evaluation and Research, a biologics license application on a form prescribed by the Director, Center for Biologics Evaluation and Research. For such well-characterized biotechnology products, a separate establishment license application shall not be required. An application for a license for a well-characterized biotechnology product shall include: Data derived from nonclinical laboratory and clinical studies that demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency; with respect to each nonclinical laboratory study, either a statement that the study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance; statements regarding each clinical investigation involving human subjects contained in the application, that it either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter or was not subject to such requirements in accordance with §§ 56.104 or 56.105 of this chapter, and was conducted in compliance with requirements for informed consent set forth in part 50 of this chapter; a full description of manufacturing methods; data establishing stability of the product through the dating period; sample(s) representative of the product to be sold, bartered, or exchanged or offered, sent, carried or brought for sale, barter, or exchange; summaries of results of tests performed on the lot(s) represented by the submitted samples; and specimens of the labels, enclosures, and containers proposed to be used for the product. An application for license shall not be considered as filed until all pertinent information and data have been received from the applicant by the Center for Biologics Evaluation and Research. The applicant shall also include either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

(2) Approval of the biologics license application and issuance of the biologics license shall constitute a determination that the establishment and the product meet applicable standards established in this chapter to ensure the continued safety, purity, and potency of such products. Applicable standards for the maintenance of establishments for the manufacture of well-characterized biotechnology product shall include the good manufacturing practice requirements set forth in parts 210 and 211 of this chapter. The following sections in parts 600 through 680 of this chapter shall not be applicable to well-characterized biotechnology products: § § 600.10(b) and (c), 600.11, 600.12, 600.13, 601.1, 601.30, 601.31, 601.32, 610.11, 610.53, and 610.62 of this chapter.

(3) The term ''product license application,'' as it is used in those sections of parts 600 through 680 of this chapter that are applicable to well-characterized biotechnology products, shall include a biologics license application for a well-characterized biotechnology product.

(4) To the extent that the requirements in this paragraph conflict with other requirements in this subchapter, this paragraph (c) shall supercede such other requirements.

Dated: January 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–1582 Filed 1–25–96; 10:42 am]

BILLING CODE 4160–01–F

21 CFR Parts 314, 600, and 601

[Docket No. 95N–0329]

RIN 0910–AA57

Changes to an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations for reporting changes to an approved application in order to reduce unnecessary reporting burdens on applicants holding licenses approved in the Center for Biologics Evaluation and Research (CBER) under the Public Health Service Act (the PHS Act) to manufacture biological products. In addition, FDA is proposing to amend the corresponding drug regulations for submitting supplements for and reporting changes to an application approved under the Federal Food, Drug, and Cosmetic Act (the act) for well-characterized biotechnology products reviewed in the Center for Drug Evaluation and Research (CDER) to harmonize the drug and biologics regulations. These actions are part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives.

DATES: Written comments on this proposed rule by April 29, 1996. Submit written comments on the information collection requirements by February 28, 1996, but not later than March 29, 1996. The agency proposes that any final rule that may issue based on this proposal become effective immediately upon its date of publication in the Federal Register.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Tracey H. Forfa or Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074

or;

Yuan Yuan Chiu, Center for Drug Evaluation and Research (HFD–820), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

This proposed rule is issued in accordance with the principles set forth in the Regulatory Flexibility Act of 1990 (Pub. L. 96–354), Executive Order 12866; the President's memorandum of March 4, 1995, announcing the ''Regulatory Reinvention Initiative;'' the President's memorandum of April 21, 1995, entitled, ''Regulatory Reform—Waiver of Penalties and Reduction of Reports;'' the April 1995 Publication ''Reinventing Drug and Medical Device Regulations, and the November 1995, Presidential National Performance Review report ''Reinventing the Regulation of Drugs Made From Biotechnology.'' The Regulatory Flexibility Act requires Federal agencies to consider the burden a rule may have on small business entities through a regulatory flexibility analysis and to periodically review its rules to determine if regulatory burdens may be reduced. Executive Order 12866 directs Federal agencies and the Office of Information and Regulatory Affairs (OIRA) to implement measures that will reform and make the regulatory process more efficient.

Under Executive Order 12866, FDA published a document in the Federal Register on January 20, 1994 (59 FR 3043), that announced FDA's plan to review and evaluate all significant regulations for their effectiveness in achieving public health goals and in order to avoid unnecessary regulatory burden. FDA published two documents in the Federal Register of June 3, 1994 (59 FR 28821 and 28822), that announced the review of certain general biologics and blood and blood product regulations by CBER to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary.

The President's memorandum of March 4, 1995, entitled ''Regulatory Reinvention Initiative'' sets forth four steps toward regulatory reform, one of which instructs agencies to revise those regulations that are in need of reform. FDA believes that this proposed regulation is in keeping with these principles without compromising the agency's duty and commitment to protect the public health. The President's memorandum of April 21, 1995, directs Federal agencies to reduce the frequency of regularly scheduled reports that the public is required, by rule or policy, to provide to the Federal government. In addition, the November 1995, Presidential National Performance Review report entitled ''Reinventing the Regulation of Drugs Made From Biotechnology,'' focused on FDA's efforts to reform the regulation of biotech drugs used for therapy.

FDA also held a public meeting on January 26, 1995, to discuss the retrospective review effort. The public meeting was a forum for the public to voice its comments regarding the retrospective review of regulations being undertaken by CBER.

Many of the comments submitted to the public docket regarding the CBER retrospective regulations review were requests to revise § 601.12 *Changes to be reported* (21 CFR 601.12). Most of those comments requested revision of the regulation to reduce the burden on applicants of reporting changes to an approved application. As part of the CBER regulatory review initiative, and in response to the comments received, FDA published in the Federal Register of April 6, 1995 (60 FR 17535), a document entitled, ''Changes to Be Reported for Product and Establishment License Applications; Guidance.'' The guidance document set forth FDA's current interpretation of § 601.12 and was intended to reduce the reporting burden as well as facilitate the timely implementation of certain changes by manufacturers. The guidance document was the first step in a reinventing Government initiative outlined in the April 1995 publication ''Reinventing Drug and Medical Device Regulations.''

Concurrently, CBER's Office of Blood Research and Review (OBRR), in letters to applicants and an industry trade organization and in presentations at a January 30 and 31, 1995, ''Licensing Blood Establishments'' workshop,

communicated FDA's interpretation of § 601.12 as it applies to blood establishments. OBRR discussed categories of changes that blood establishments could implement without supplement submission and FDA approval. These categories include noncritical standard operating procedures, certain personnel changes, and some facility changes. During a 9-month period (October 1994 to June 1995), CBER received over 850 such submissions that were not required to await FDA approval.

The agency is proposing to revise § 600.3 (21 CFR 600.3) and § 601.12 to permit more substantial report reduction as the second step in the President's reinvention initiative. FDA is also proposing to add § 314.70(g) (21 CFR 314.70(g)) which would apply to well-characterized biotechnology products approved under the act to harmonize CDER and CBER postapproval reporting requirements. FDA published a definition of a well-characterized therapeutic recombinant deoxyribonucleic acid (DNA)-derived and monoclonal antibody biotechnology product in a document published in the Federal Register of December 8, 1995, (60 FR 63048), as follows:

A chemical entity(ies) whose identity, purity, impurities, potency, and quantity can be determined and controlled.

Identity:

a. *Recombinant DNA Biotechnology Products*

The primary structure is known (i.e., amino acid sequence), and

The secondary structure is known (e.g., disulfide linkage), and

Post-translational modifications are known (e.g., glycosylation), or

b. *Monoclonal Antibodies*

The identity can be determined by rigorous physicochemical and immunochemical characterization without fully knowing its chemical structure

Purity and impurities:

The purity is quantifiable.

The impurities are quantifiable, and identified if feasible

Potency and quantity:

The biological activity is measurable.

The quantity is measurable.

Well-characterized therapeutic recombinant DNA-derived or monoclonal antibody biotechnology product require proper raw materials controls, process validation and controls, and sensitive and validated test methods and specifications.

FDA plans to hold an open public meeting that will be announced in a future issue of the Federal Register during the comment period of this proposed rule to facilitate public discussion.

B. Summary of the Proposed Rule

1. Summary of Changes to § 600.3—Definitions

There has been much confusion regarding the use of the words ''supplement'' and ''amendment'' in relation to license applications for biological products approved under section 351 of the PHS Act. In order to clarify the use of these terms, and to facilitate a clearer understanding of the proposed revision of § 601.12, FDA is proposing to amend § 600.3 (21 CFR 600.3) to include definitions of ''supplement'' and ''amendment.'' Previously, a change submitted to an approved biological product license application (PLA) or establishment license application (ELA) was termed an ''amendment.'' In order to achieve consistency with CDER in implementing the Prescription Drug User Fee Act of 1992 (PDUFA)(21 U.S.C. 301, *et seq.*), CBER began using the term ''amendment'' to refer to a change submitted to a pending license application or supplement, and the term ''supplement'' to refer to a change submitted to an approved license application. A change to an unapproved (pending) new drug application (NDA) is also referred to as an ''amendment'' and a change submitted to an approved NDA is also referred to as a ''supplement.'' Under this proposed rule, § 600.3(ff) would define the term ''amendment'' as the submission of information to an unapproved license application or supplement. Such information could include additional information or reanalysis of data previously submitted, to revise or modify the application as originally submitted. Section § 600.3(gg) would define a ''supplement'' as a request to the Director, CBER, to approve a change to an approved license application. A supplement would ordinarily contain a description of the proposed change and the data and information supporting the change.

FDA believes that defining these terms in the regulations will simplify the approval process for applicants, minimize misunderstanding between CBER and the biologics industry, and harmonize the use of the terms within CBER and CDER.

2. Section 314.70—Changes to an Approved Application

To ensure consistent treatment of well-characterized biotechnology-derived products within CBER and CDER, conforming amendments to § 314.70 are also being proposed. Specifically, FDA is proposing an exception in § 314.70(g) for well-characterized biotechnology products that provides that manufacturing changes to these products would be handled as described in proposed § 601.12(b), (c), and (d) with regard to preapproval, notification, and submission in annual reports instead of as described in § 314.70 (a), (b), (c), and (d). However, labeling changes would not be affected by the proposed change.

3. Summary of Proposed § 601.12—Changes to an Approved Application

Section 601.12 currently requires that important proposed changes in location, equipment, management and responsible personnel, or in manufacturing methods and labeling, be reported to the Director, CBER, not less than 30 days in advance of the time such changes are intended to be made. Proposed changes in manufacturing methods and labeling may not become effective until notification of acceptance is received from the Director, CBER.

In comments made to the public docket and at the January 26, 1995, public meeting, representatives from the biologics industry requested that FDA modify § 601.12 to be more flexible and less burdensome. The representatives also asked that a category system of changes to be reported be implemented, which would include changes that could be made without prior approval and those that would be required to be described in an annual report. Several comments requested that CBER make the reporting process comparable to § 314.70 *Supplements and other changes to an approved application* which sets out three categories of notification of changes that are reported to FDA. These include: Supplements requiring FDA approval before the change is made, supplements for changes that may be made before FDA approval (changes being effected), and changes described in an annual report. Another comment stated that regulations should not stand as a barrier to manufacturing process improvement by requiring the filing of a supplement and CBER approval for even minor changes and improvements in the manufacturing process.

The regulatory scheme that the agency is now proposing responds to these and other requests from the public. In response to the comments, FDA undertook an informal review of the types of changes that had historically been subject to prior approval and the impact such changes had on products and establishments. FDA also examined the existing requirements applicable to drugs and devices approved under the act; in particular, the regulations found in §§ 314.70 and 814.39 (21 CFR

814.39). FDA used this information to develop categories of reportable changes and criteria for assigning a change to the appropriate category.

FDA is now proposing a three-category scheme for changes in the product, production process, equipment, facilities, or responsible personnel that would eliminate FDA approval of certain reportable changes and create a category of changes that would be described in an annual report. In addition to these two categories, there is a category of changes which would require approval prior to distribution. The agency believes that this proposed rule reduces unnecessary reporting and approval of changes for biologics licensed under the PHS Act consistent with the corresponding regulations applicable to drugs and devices approved under the act. These categories would include: (1) Supplement submission and approval prior to distribution of a product made using a proposed change that has a substantial potential to have an adverse effect on a product's safety, purity, potency, or effectiveness; (2) notification not less than 30 days prior to distributing a product made using a change that has a moderate potential to have an adverse effect on a product's safety, purity, potency, or effectiveness; and (3) an annual report describing changes that have minimal potential to have an adverse effect on a product's safety, purity, potency, or effectiveness. The agency does not intend that this rule would apply to normal maintenance and repair which would continue to be documented as it is now by firms under applicable current good manufacturing practice (CGMP) regulations (21 CFR parts 210, 211, 606, and 820). The proposed revision also includes new § 314.70(g) for well-characterized biotechnology products to make the requirements for changes made to such products consistent within CBER and CDER.

The proposed revision also sets out a separate, three-category reporting system for biological product labeling changes. This scheme differs slightly from the scheme for proposed changes in the product, production process, equipment, facilities, or responsible personnel, and is consistent with requirements for labeling changes applicable to drugs approved under the act. A change to a product package label, container label, or package insert would require one of the following: (1) Submission of a supplement with FDA approval required prior to product distribution; (2) submission of a supplement with product distribution allowed prior to FDA approval; or (3) submission of the final printed label in an annual report. Promotional labeling and advertising would be required to be submitted in accordance with the requirements of § 314.81(b)(3)(i)(21 CFR 314.81((b)(3)(i)).

Although the proposed decrease in reporting and approval requirements and the corresponding reduction in the agency's role in reviewing changes before they are implemented does present some risks to product safety, purity, potency, and effectiveness, the agency believes that these risks are minimal. Under the proposed rule the applicant would be required to document that each change has no adverse effect on the safety, purity, potency, or effectiveness of the product. Such documentation would include appropriate validation and/or other studies. In some cases clinical data would be necessary and in other cases it would not. Applicants would be required to maintain records of the validation and study data under existing CGMP requirements. For those changes no longer requiring supplement approval, FDA review would shift to postmarketing review including inspections of manufacturing facilities.

The proposed rule includes some specific examples of changes that fall into a particular category, but does not attempt to set out a comprehensive list of the changes included in each category. The agency recognizes that scientific and technological advances may change the need for supplement approval and/or reporting of many types of changes. Moreover, the potential for a particular change to adversely affect a product's safety, purity, potency, or effectiveness may differ for different products. FDA recognizes that a change made to a less well-characterized product could fall into a different reporting category than the same change made to a product that was adequately characterized using analytical and functional tests. For example, scale up of a purification process may have a greater impact on a live virus vaccine than it may on a well-characterized recombinant DNA-derived purified protein. The agency believes that it can more readily respond to advances in technology, differences among products, and knowledge gained from experience by creating a rule that sets out general categories of changes. FDA recognizes, however, that applicants need clear guidance on how the agency intends to interpret the rule in order to efficiently produce products and adhere to regulatory requirements. Accordingly, FDA intends to make available guidance documents to describe the agency's current interpretation of specific changes falling into each category and to modify the documents as needed to reflect changes in science and technology. Notices of availability for drafts of guidance documents for reporting changes to most biological products and to well-characterized recombinant DNA-derived and monoclonal antibody biotechnology products are published elsewhere in this issue of the Federal Register. FDA is seeking comment on the use of guidance documents in conjunction with a final rule that may result from this proposal. FDA is also soliciting comment on the appropriate categorization of specific changes enumerated in this proposal and the guidance documents. In the Federal Register of October 25, 1995, (60 FR 54695), FDA announced that a workshop would be held on December 11 through 13, 1995, to discuss the definition of a well-characterized biotechnology product. Information from this workshop will help FDA to refine its definition of a well-characterized biotechnology product.

FDA also anticipates that applicants could consult with the office which has product or establishment responsibility in CBER, or the Office of New Drug Chemistry in CDER, regarding appropriate objectives and design of studies to validate and document the potential for adverse effect of a proposed change for a particular product prior to committing the resources for such studies. Guidance on the appropriate reporting mechanism would also be available from these offices.

The proposed rule would authorize the Directors of CBER and CDER, or their designees under 21 CFR part 5, to make decisions under the provisions of the rule as they apply to their respective centers.

The agency expects that applicants would update their marketing applications in an annual report to assure that they accurately reflect current conditions. FDA is seeking comments on mechanisms that industry and the public believe may be appropriate for the periodic update of marketing applications. This proposed rule would require that some changes in manufacturing be submitted annually. CBER does not currently require, nor would this proposed rule require, that the annual report include additional information that is submitted for a drug approved under the act under § 314.81(b)(2). FDA requests comment on whether the annual report for a biological product licensed under the

PHS act should include the information described in § 314.81(b)(2).

The proposed rule does not address requirements for submitting changes to a pending license application or supplement. Applicants currently submit amendments to pending applications in order to comply with the requirement in the PHS Act that a biologic product distributed for sale, barter, or exchange in interstate commerce must be manufactured in accordance with its license, and the regulations in § 601.2 that set out the information and data that must be submitted in such license applications. FDA intends to consider whether specific requirements for submitting amendments to pending applications should be included when the agency undertakes a review of the licensing requirements in part 601 (21 CFR part 601).

4. Analysis of § 601.12—Changes to An Approved Application

a. *Changes requiring supplement submission and approval prior to distribution of product made using the change*. Currently, all important proposed changes made by applicants must be reported not less than 30 days in advance of the time such changes are intended to be made. Such changes in manufacturing methods and labeling may not become effective until notification of acceptance is received from the Director, CBER. Accordingly, CBER requires approval of all important changes in manufacturing methods and labeling before such changes are implemented. FDA continues to believe that it is important that the agency review data regarding any change that has a substantial potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product, prior to distribution of the product made using the change, to assess whether the change will have a detrimental impact on the licensed product with regard to its safety, purity, potency, effectiveness, and consistency in biological and clinical characteristics.

Proposed § 601.12(b)(1) would require an applicant to submit a supplement for approval to the Director, CBER, for any proposed change in the product, production process, equipment, or facilities that has a substantial potential to have an adverse effect on the product's safety, purity, potency, or effectiveness. These changes have the highest probability to adversely affect the product's safety, purity, potency, or effectiveness, and, in most instances, are integral to the manufacturing process or product production equipment. Proposed § 601.12(b)(1) would require the applicant to submit a supplement containing a detailed description of the proposed change, the products involved, the manufacturing sites or areas affected, a description of the methods used and studies performed to evaluate the effect of the change on the product's safety, purity, potency, and effectiveness, the data derived from clinical and/or nonclinical laboratory studies, relevant validation protocols and data, and a reference list of the relevant standard operating procedures (SOP's). Approval of the supplement by the Director, CBER, would be required prior to distributing product made using the change.

FDA proposes to enumerate the following changes that have a substantial potential to have an adverse effect on a product's safety, purity, potency, or effectiveness: A new indication, route of administration, dosing schedule, dosage form, or formulation; the addition, removal, or reordering of the step(s) of the licensed production process; and the conversion of a single product manufacturing area to a multiproduct manufacturing area. The agency believes that the need for FDA premarket approval of these significant changes is unlikely to vary with technological advances or due to differences among products, and that these changes should be enumerated in the rule.

Other examples of changes that have caused detrimental effects on the safety, purity, potency, or effectiveness of products, even where applicants performed validation or other studies, include process changes or changes in analytical methods that result in a change of specification limits and addition of a new location for manufacture. FDA believes that the agency's continued prior review and approval of such changes is currently necessary to protect the public from products whose safety, purity, potency, or effectiveness may be compromised. However, FDA is proposing to describe these, and additional, specific examples of changes that CBER currently believes have substantial potential to adversely affect the product, in guidance, rather than enumerate them in the rule. FDA anticipates that scientific advances and future experience may reduce the need for premarket approval of certain changes and believes that the agency will be able to respond readily to changed circumstances by revising guidance that interprets the rule.

b. *Changes requiring notification not less than 30 days prior to distributing product made using the change*. FDA believes that the public health can be adequately protected by eliminating agency approval of changes that have only a moderate potential to have an adverse effect on the safety, purity, potency, or effectiveness of a product. Changes that have moderate potential to affect a product's safety, purity, potency, or effectiveness are changes that do not have as high a probability for causing an adverse effect as those for which the agency proposes to require supplement approval. Under current § 601.12, the agency requires FDA approval of all important proposed changes to a product, and requires that all important proposed changes in manufacturing methods and labeling await such approval before they may be distributed. FDA is now proposing to require that applicants notify the agency not less than 30 days prior to distributing a product made with a change in the product, production process, equipment, facilities, or responsible personnel that has moderate potential to have an adverse effect on the product, but to permit a product to be distributed after the 30-day period has elapsed without awaiting FDA approval. These notifications would not be considered supplements requiring approval. Thus, many changes that now require FDA approval as supplements could be implemented rapidly through the notification process without the prior submission of a supplement. For example, based on FDA's experience in reviewing submissions, the agency currently believes that minor changes in fermentation batch size using the same equipment and resulting in no change in specifications of the bulk or final product, and increases or decreases in the purification scale, not associated with a process change or different equipment, have moderate potential to have an adverse effect on the product.

In the notification, an applicant would be required to provide the agency with a clear description of the change, the product or products involved, the manufacturing sites or areas involved, a brief description of the validation and/or other clinical and/or nonclinical laboratory studies conducted to analyze the effect of the change on the safety, purity, potency, and effectiveness of the product, the dates of any such studies, reference to any SOP's used to complete the studies, and a summary of the relevant data or information. During the 30-day period, FDA would review the notification to determine if it was properly submitted as a notification. If FDA agreed that the change described was of the type that had moderate potential to adversely affect the safety, purity, potency, or effectiveness of the product, and the notification included

all of the required information, the applicant could begin distribution of a product made using the change 30 days after FDA's receipt of the notification.

Under the proposed rule, FDA would ordinarily contact the applicant before the expiration of the 30-day period if the agency determined that the change was improperly submitted as a notification. If FDA informed the applicant within the 30-day period that the submission did not meet the requirements for a notification, the applicant would be required to correct the deficiencies in the information submitted before distributing the product. Depending on the problem, FDA would respond in one of two ways: (1) If the change was of the type that presented a substantial potential to adversely affect the safety, purity, potency, or effectiveness of the product, the agency would inform the applicant that the change should be submitted as a supplement and the applicant would be required to await FDA approval before product produced with the change could be distributed; or (2) if the change was of the type that could properly be submitted as a notification, but the required information was incomplete, the applicant would be required to supply the missing information and wait until FDA determined compliance with this section before distributing the product.

FDA intends, during the 30 days, to focus its review on determining whether the applicant reported the change under the appropriate mechanism, and, if so, whether any of the required information was missing. Under the proposed rule, FDA would not ordinarily contact the applicant if the notification was properly submitted in accordance with §§ 601.12(c) or 314.70(g)(2). FDA anticipates that applicants would use a method of delivery for notifications that would allow confirmation of the submission having been received by FDA.

FDA would also ordinarily review the substantive information contained in a notification and request the applicant to clarify the submission if necessary. If the agency's review determined that additional studies or information were necessary to document the lack of an adverse effect on the safety, purity, potency, or effectiveness of the product, the agency could request that additional data be collected. Failure to comply with the proposed requirements and existing CGMP requirements to properly validate the change could result in enforcement action. Following the agency's review, FDA would send to the applicant a stamped copy of the cover letter for the notification indicating that FDA had placed the submission in the applicant's license application file. FDA anticipates that the agency could conduct a more extensive review of data supporting the notification during inspections if necessary.

FDA believes that a notification process, as described above, for changes that have a moderate potential to affect the safety, purity, potency, or effectiveness of the product would protect against the distribution of unsafe or ineffective products while speeding the availability of improved products. Under the proposed rule, applicants would be required to demonstrate, through appropriate validation or other studies, that a change has no adverse effect on the safety, purity, potency, and effectiveness of the product. Applicants would be required to briefly describe the studies and data in the notification. While a full description of the studies would not be required to be submitted in a notification, as it generally would be in a supplement, applicants would be required to maintain the data in records that are available for FDA inspection under existing CGMP's. The 30-day period that would be required to elapse before products made using the change could be distributed would permit the agency to redirect submissions for changes that could substantially affect product safety, purity, potency, or effectiveness to the supplement approval process before the product entered the market. In addition, the agency could identify applicants that, through an incomplete submission, failed to establish that they had followed the necessary steps to validate and implement a change. Applicants would be required to submit the missing information before they could distribute the product.

c. *Changes to be described in an annual report.* FDA recognizes that there are changes in the product, production processes, equipment, facilities, and responsible personnel that have minimal potential to have an adverse effect on the product's safety, purity, potency, or effectiveness. Under the current § 601.12, the agency has required many of these changes to await supplement approval before they could be implemented. FDA believes that prior agency approval of these changes is unnecessary, and is proposing in § 601.12(d) that such changes would not be required to be approved by the agency. FDA continues to believe that it is important that such changes be documented and validated so that there is a mechanism for assessing the consequences of the change. FDA is therefore proposing that changes that have minimal potential to have an adverse effect on the product's safety, purity, potency, or effectiveness be required to be described by the applicant in an annual report. The annual report would be required to be submitted each year within 60 days of the anniversary date of approval of the application. FDA believes that the agency can effectively assess compliance with this section and CGMP requirements for changes that have minimal potential to adversely affect the product's safety, purity, potency, or effectiveness by having ready access to information regarding such changes through the submission of an annual report and by inspection. Applicants would be required to include in the annual report a listing of all products involved, a brief description of and reason(s) for the change, the manufacturing sites or areas involved, the date each change was made, and a cross-reference to any validation protocols and/or SOP's. Both the applicant and FDA could use this information to assess whether problems which may arise with products are related to such changes. Under proposed § 601.12(a), the applicant would be required to perform appropriate validation or other studies to demonstrate the lack of adverse effect on the safety, purity, potency, and effectiveness of the product. Applicants would maintain records of such studies under existing CGMP requirements.

As a result of FDA's experience in reviewing changes, the agency believes that changes that have a minimal potential to have an adverse effect on the product would include such changes as a change in storage conditions of in-process intermediates based on data derived from studies following a protocol in the approved license application; modifications in analytical procedures with no change in the basic test methodology or existing release specifications; relocation of analytical testing laboratories within a licensed facility; and area upgrades such as the installation of improved finishes on floors or walls.

d. *Labeling.* Under the current § 601.12, all important proposed labeling changes are required to be submitted for FDA approval before they may be implemented. The agency recognizes, however, that some labeling changes may not have a substantial impact on the safe and effective use of the product. For other changes, such as updates of important safety information, it is important that prescribers and patients have access to current information as soon as it becomes available. Therefore, the agency is proposing to revise the biological products reporting requirements for

labeling changes. The regulations in § 314.70(b), (c), and (d), governing how labeling changes are reported for products regulated by CDER, are not affected by the proposal. In fact, the proposed revision of § 601.12(e) is consistent with requirements for labeling changes applicable to drugs approved under the act.

Changes to labeling would be submitted to CBER in one of the following ways: (1) A supplement requiring FDA approval prior to distribution of product with the revised labeling, (2) a supplement requiring FDA approval but permitting the distribution of product with the accompanying revised labeling prior to such approval, or (3) submission of final printed labeling in an annual report. It is expected that proposed § 601.12(e) would significantly decrease the number of labeling submissions that currently require approval prior to use of the labeling.

Under proposed § 601.12(e)(2), an applicant would be required to submit a supplement, but could disseminate the revised labeling with the product, at the time the supplement was submitted. Such revisions to the labeling would include any information that adds or strengthens a contraindication, warning, precaution, or adverse reaction; adds or strengthens a statement about abuse, dependence, psychological effect, or overdosage; adds or strengthens an instruction about dosage and administration that is intended to increase the safe use of the product; or deletes false, misleading, or unsupported indications for use or claims for effectiveness.

FDA believes that permitting these labeling changes to be effected and product distributed prior to FDA approval would facilitate labeling changes intended to adequately inform prescribers and patients of the risks and benefits of a biological product and thereby allow prescribers and patients earlier access to important new information on the safe use of the product. Proposed § 601.12(e)(2) would require that the supplement clearly identify any changes being made and include necessary supporting data. Under the proposed rule, the changes identified in § 601.12(e)(2) could be implemented prior to agency approval. FDA could, however, deny approval of a supplement for a labeling change that has already been disseminated with the product. In assessing an applicant's plans to correct a problem, FDA would consider the applicant's reasons for making the change and the alternatives available to the applicant. If the circumstances warranted, FDA could require the labeling change to be immediately discontinued. However, when circumstances permit, the agency would allow the applicant to correct a problem with minimal expense and without unnecessary waste.

Under proposed § 601.12(e)(3), an applicant making editorial or other minor changes, or a change in the information on how the biologic is supplied that does not involve a change in the dosage strength or dosage form, would be required to submit a description of the changes and all final printed labeling incorporating the changes in an annual report to be submitted to the Director, CBER. For all changes in the package insert, package label, and container label that would not fall under § 601.12(e)(2) or (e)(3), an applicant would be required to submit a supplement supporting the proposed change and await FDA approval prior to distribution.

Under proposed § 601.12(e)(4), promotional labeling and advertising would be submitted in accordance with 21 CFR 314.81(b)(3)(i), which requires that an applicant submit specimens of mailing pieces and any other labeling or advertising devised for promotion of the product at the time of initial dissemination of the labeling and at the time of initial publication of the advertisement for a prescription product.

e. *Failure to comply*. FDA is proposing in § 601.12(f) that in the event of repeated failure of the applicant to comply with § 601.12, the Director, CBER, may require that the applicant submit a supplement for any proposed change and obtain CBER approval prior to distributing the product made using the change. This measure would be in addition to other remedies available in applicable laws and regulations, including suspension or revocation of licenses, seizure of products, and injunction, among others. With this proposed rule, FDA is undertaking to significantly reduce the number of changes that are reported, reviewed, and approved by the agency. Continued protection of the public from products with compromised safety, purity, potency, or effectiveness will depend on applicants' adherence to the proposed requirements to conduct validation and/or other studies to document the lack of adverse effect on the product and utilization of the appropriate mechanism to inform the agency of such changes. In determining repeated failure to comply with the § 601.12 and whether an applicant would be required to file future submissions as supplements, the agency would consider, among other things, the applicant's compliance history and the significance of the deficiencies.

f. *Administrative review*. Proposed § 601.12(g) provides that an applicant may request a review of FDA employee decisions made pursuant to section § 601.12 in accordance with § 10.75 (21 CFR 10.75). Section 10.75 provides a mechanism for internal agency review of decisions. FDA proposes to include the reference to § 10.75 in § 601.12(g) so that applicants who wish agency review of a decision made under the provisions of the rule are made aware of the mechanism for such review. The internal agency review of a decision would be based on the information in the administrative file. FDA believes that it is important for the agency to apply regulations affecting regulated products consistently and fairly, and believes that agency review should be available to resolve a disputed issue.

II. Analysis of Impacts

A. Method of Analysis

To determine the impact of the proposed rule, CBER undertook an analysis of changes approved as supplements during the 9-month period between October 1, 1994, and June 1, 1995. CBER has determined that the proposed rule as currently written would result in an overall 32 percent reduction in submissions requiring prior agency approval before an applicant could commence distributing product made using the change. The extent of the reduction would be greater for certain products. Under the proposed regulation, 88 of 175 submissions reviewed as supplements under the current regulation (for changes to biological products other than blood products and blood component products) would be supplements requiring prior approval, 62 would be notifications to CBER not requiring FDA approval, and 25 would be described in an annual report. For blood and blood components, of 177 supplements approved in a 2-month portion of the 9-month period, 128 would be supplements requiring prior approval under the proposed rule, 36 would be notifications, and 13 would be described in an annual report.

B. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the overall result of the proposed rule would be a substantial reduction in reporting burden for applicants and in review burden for the agency. In addition, FDA anticipates that the proposed rule would encourage applicants to improve their licensed products and methods of manufacture.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because, as stated above, the overall result of the proposed rule would be a substantial reduction of the regulatory and reporting burden, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Review under the Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary to for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: 21 CFR 601.12—*Changes to an Approved Application* and 21 CFR 314.70(g) *Exception*.

Description: This proposed rule would change the requirements for respondents to report to FDA changes in the product, labeling, production process, equipment, facilities, or responsible personnel established in an approved application for a biological product or for a well-characterized biotechnology product. The respondent would report the change to FDA in one of the three following ways depending on the potential for the change to have an adverse effect on the safety, purity, potency or effectiveness of the product: (1) Changes that have a significant potential to have an adverse effect on the product would be submitted in a supplement requiring prior approval by FDA before distribution of a product made using the change; (2) changes that have a moderate potential to have an adverse effect on the product would be submitted to FDA in a notification not less than thirty days prior to distribution of the product made using the change; and (3) Changes that have a minimal potential to have an adverse effect on the product would be submitted by the respondent in an annual report.

Labeling changes for a biological product would also be submitted in one of the following ways: (1) A supplement requiring FDA approval prior to distribution of product with the revised labeling; (2) a supplement requiring FDA approval but permitting the distribution of product with the accompanying revised labeling prior to such approval; or (3) submission of final printed labeling in an annual report. Promotional labeling and advertising would be submitted in accordance with 314.81(b)(3)(i). Labeling changes for well-characterized biotechnology products would not be affected by this proposed rule.

Description of Respondents: All manufacturers and applicants holding a biological license approved under section 351 of the Public Health Services Act and all manufacturers and applicants of well-characterized biotechnology products holding an approved NDA would report (Business or other for-profit).

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to FDA. There are no capital costs associated with this information collection. It is estimated that 20 percent of all reports required under these proposed regulations are being prepared by contractors. The burden hours in the chart below therefore reflect a 20 percent reduction per regulation because these burden hours will not be expended by the affected industry rather they will be expended by the contractors. It is estimated that a contractor will charge $40 per hour for the service of preparing these reports. The 20 percent burden hours multiplied by $40 per hour are reflected in the column labeled ''Operating and Maintenance Costs.''

The agency seeks comments on these estimates, particularly the industry's view of the number of firms and products affected by the collections of information contained in this proposed rule.

Estimated Annual Burden

Regulation (21 CFR)	Number of Respondents	Hours Per Response	Number of Responses	Number of Responses Per Respondent	Total Operating and Maintenance Costs	Total Hours Per Regulation
601.12(b)	391	80	610	1.56	$390,400	39,040
601.12(c)	391	40	280	0.72	$89,600	8,960
601.12(d)	391	10	110	0.28	$8,800	880
601.12(e)(1)	391	40	200	0.51	$64,000	6,400
601.12(e)(2)	391	20	20	0.05	$3,200	320
601.12(e)(3)	391	10	220	0.56	$17,600	1,760
601.12(e)(4)	391	10	110	0.28	$8,000	800

Estimated Annual Burden						
Regulation (21 CFR)	Number of Respondents	Hours Per Response	Number of Responses	Number of Responses Per Respondent	Total Operating and Maintenance Costs	Total Hours Per Regulation
314.70(g)(1)	4	80	50	12.5	$32,000	3,200
314.70(g)(2)	2	40	3	1.5	$960	96
314.70(g)(3)	6	10	20	3.33	$1,600	160
Totals					Total O&M Costs = $616,160	Total Hours = 61,616

The agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Submit written comments on the information collection by February 28, 1996, but not later than March 29, 1996.

D. Review Under the National Environmental Policy Act

The agency has determined under 21 CFR 25.24(a)(8) 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.

Interested persons may, on or before April 29, 1996, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Submit comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, (address above).

As stated previously, FDA plans to hold an open public meeting during the comment period to facilitate public comment on this proposed rule. The time and location of this meeting will be announced in a future issue of the Federal Register.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 314, 600, and 601 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

2. Section 314.70 is amended by adding new paragraph (g) as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(g) *Exception.* An applicant proposing to make a change in a well-characterized biotechnology product of the type described in § 314.70(a), (b)(1), (b)(2), (c)(1), (c)(3), (d)(1), and (d)(4) through (d)(9) shall comply with the following:

(1) *Changes requiring supplement submission and approval prior to distribution of product made using the change.* (i) A supplement shall be submitted for any proposed change in the product, production process, equipment, or facilities that has substantial potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product. These changes include but are not limited to:

(A) A new indication, route of administration, dosage form, dosing schedule or formulation;

(B) Addition, removal, or reordering of the step(s) of the production process; and

(C) Change from production of a single product to production of multiple products at a facility.

(ii) The applicant shall obtain FDA approval of the supplement prior to distribution of the product made using the change. The following information shall be contained in the supplement:

(A) A detailed description of the proposed change;

(B) The product(s) involved;

(C) The manufacturing site(s) or area(s) affected;

(D) A description of the methods used and studies performed to evaluate the effect of the change on the product's safety, purity, potency, and effectiveness;

(E) The data derived from such studies;

(F) Relevant validation protocols and data; and

(G) A reference list of relevant standard operating procedures (SOP's).

(2) *Changes requiring notification not less than 30 days prior to distributing product made using the change.* (i) An applicant shall inform FDA, in a written notification labeled ''Notification—Changes being effected in 30 days,'' of any change in the product, production process, equipment, facilities, or responsible personnel that has moderate potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product. Distribution of the product manufactured after the change was instituted may not begin until 30 days after FDA notification. The following information shall be contained in the notification:

(A) A clear, brief description of the change;

(B) The products(s) involved;

(C) The manufacturing site(s) or area(s) involved;

(D) A brief description of the validation and/or other studies

conducted to analyze the effect of the change on the safety, purity, potency, and effectiveness of the product;

(E) The dates of the studies;

(F) Reference to relevant SOP's used to complete the studies; and

(G) A summary of the relevant data or information.

(ii) If within 30 days following FDA's receipt of the notification FDA informs the applicant that either:

(A) The change requires supplement submission in accordance with paragraph (g)(1) of this section; or

(B) Any of the information required under paragraph (g)(2)(i) of this section is missing, the applicant shall not distribute the product made with the change until FDA determines that compliance with this section is achieved.

(3) *Changes to be described in an annual report.* Changes in the product, production process, equipment, facilities, or responsible personnel that have minimal potential to have an adverse effect on the product's safety, purity, potency, or effectiveness, shall be documented by the applicant in an annual report submitted each year within 60 days of the anniversary date of approval of the application. The annual report shall contain the following information for each change:

(i) A list of all products involved;

(ii) A brief description of and reason(s) for the change;

(iii) The manufacturing sites or areas involved;

(iv) The date each change was made; and

(v) A cross-reference to relevant validation protocol(s) and/or SOP's.

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PART 600—BIOLOGICAL PRODUCTS: GENERAL

3. The authority citation for 21 CFR Part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

4. Section 600.3 is amended by adding new paragraphs (ff) and (gg) to read as follows:

§ 600.3 Definitions.

(ff) *Amendment* is the submission of information to a pending license application or supplement, to revise or modify the application as originally submitted.

(gg) *Supplement* is a request to the Director, Center for Biologics Evaluation and Research, to approve a change in an approved license application.

PART 601—LICENSING

5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352, of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

6. Section 601.12 is revised to read as follows:

§ 601.12 Changes to an approved application.

(a) *General.* As provided in this section, an applicant shall inform the Director, Center for Biologics Evaluation and Research (CBER), about each change in the product, labeling, production process, equipment, facilities, or responsible personnel established in the approved license application(s). Before distributing a product made using a change, an applicant shall demonstrate through appropriate validation and/or other clinical and/or nonclinical laboratory studies the lack of adverse effect of the change on the safety, purity, potency, and effectiveness of the product. Single copies of Food and Drug Administration (FDA) guidance describing FDA's current interpretation of this regulation may be obtained from the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448.

(b) Changes requiring supplement submission and approval prior to distribution of product made using the change.

(1) A supplement shall be submitted to the Director, CBER, for any proposed change in the product, production process, equipment, or facilities that has substantial potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product. These changes include but are not limited to the following:

(i) A new indication, route of administration, dosage form, dosing schedule or formulation;

(ii) Addition, removal, or reordering of the step(s) of the licensed production process; and

(iii) Change from production of a single product to production of multiple products at a licensed facility;

(2) The applicant shall obtain approval of the supplement from the Director, CBER, prior to distribution of the product made using the change. The following information shall be contained in the supplement:

(i) A detailed description of the proposed change;

(ii) The product(s) involved;

(iii) The manufacturing site(s) or area(s) affected;

(iv) A description of the methods used and studies performed to evaluate the effect of the change on the product's safety, purity, potency, and effectiveness;

(v) The data derived from such studies;

(vi) Relevant validation protocols and data; and

(vii) A reference list of relevant standard operating procedures (SOP's).

(c) *Changes requiring notification not less than 30 days prior to distributing product made using the change.* (1) An applicant shall inform the Director, CBER, in a written notification labeled ''Changes being effected in 30 days,'' of any change in the product, production process, equipment, facilities, or responsible personnel that has moderate potential to have an adverse effect on the safety, purity, potency, or effectiveness of the product. Distribution of the product manufactured after the change was instituted may not begin until 30 days after receipt of the notification by CBER. The following information shall be contained in the notification:

(i) A clear, brief description of the change;

(ii) The product(s) involved;

(iii) The manufacturing site(s) or area(s) involved;

(iv) A brief description of the validation and/or other studies conducted to analyze the effect of the change on the safety, purity, potency, or effectiveness of the product;

(v) The dates of the studies;

(vi) Reference to relevant SOP's used to complete the studies; and

(vii) A summary of the relevant data or information.

(2) If within 30 days following FDA receipt of the notification, the Director, CBER informs the applicant that either:

(i) The change requires supplement submission in accordance with paragraph (b) of this section; or

(ii) Any of the information required under paragraph (c)(1) of this section is missing, the applicant shall not distribute the product made with the change until compliance with this section is achieved.

(d) *Changes to be described in an annual report.* (1) Changes in the product, production process, equipment, facilities, or responsible personnel that have minimal potential

to have an adverse effect on the product's safety, purity, potency, or effectiveness, shall be documented by the applicant in an annual report submitted each year within 60 days of the anniversary date of approval of the application. The annual report shall contain the following information for each change:

(i) A list of all products involved;

(ii) A brief description of and reason(s) for the change;

(iii) The manufacturing sites or areas involved;

(iv) The date each change was made; and

(v) A cross-reference to relevant validation protocol(s) and/or SOP's.

(2) The applicant shall submit the report to the FDA office responsible for reviewing the application. The report shall include all the information required under this section obtained for each change made during the annual reporting interval which ends on the anniversary date.

(e) *Labeling changes*—(1) *Label changes requiring supplement submission—distribution of a product with a label change must await FDA approval.* An applicant shall submit to CBER a supplement describing a proposed change in the package insert, package label, or container label, except those described in paragraphs (e)(2) and (e)(3) of this section, and include the information necessary to support the proposed change. The supplement shall clearly highlight the proposed change in the label. The applicant shall obtain approval from the Director, CBER, prior to distributing a product with the label change.

(2) *Label changes requiring supplement submission; product with a label change may be distributed before FDA approval.* (i) An applicant shall submit to CBER, at the time such change is made, a supplement for any change in the package insert, package label, or container label to accomplish any of the following:

(A) To add or strengthen a contraindication, warning, precaution, or adverse reaction;

(B) To add or strengthen a statement about abuse, dependence, psychological effect, overdosage;

(C) To add or strengthen an instruction about dosage and administration that is intended to increase the safe use of the product; or

(D) To delete false, misleading, or unsupported indications for use or claims for effectiveness.

(ii) The applicant may distribute a product with a package insert, package label, or container label bearing such change at the time the supplement is submitted. The supplement shall clearly identify the change being made and include necessary supporting data. The supplement and its mailing cover should be plainly marked: ''Special Labeling Supplement—Changes Being Effected.''

(3) *Label changes requiring submission in an annual report.* (i) An applicant shall submit any final printed package insert, package label, or container label incorporating the following changes to CBER in an annual report submitted each year within 60 days of the anniversary date of approval of the application:

(A) Editorial or similar minor changes; or

(B) A change in the information on how the drug is supplied that does not involve a change in the dosage strength or dosage form.

(ii) The applicant may distribute a product with a package insert, package label, or container label bearing such change at the time the change is made.

(4) *Advertisements and promotional labeling.*

Advertisements and promotional labeling shall be submitted in accordance with the requirements set forth in § 314.81(b)(3)(i) of this chapter, except that Form FDA–2567 shall be used in lieu of Form FDA–2253.

(f) *Failure to comply.* In addition to other remedies available in law and regulations, in the event of repeated failure of the applicant to comply with this section, the Director, CBER, may require that the applicant submit a supplement for any proposed change to, and obtain approval of the supplement from, the Director, CBER, prior to distributing a product made using the change.

(g) *Administrative review.* Under § 10.75 of this chapter, an applicant may request internal FDA review of CBER employee decisions under this section.

Dated: January 16, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–1580 Filed 1–25–96; 10:41 am]

BILLING CODE 4160–01–F

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21 CFR Parts 600 and 601

[Docket No. 95D–0415]

Draft Guidance; Changes To An Approved Application for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Draft Guidance; Changes to An Approved Application for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products.'' This draft guidance is intended to assist applicants in determining how they should report changes to an approved license application for well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products under the proposed revision to the biologics regulations issued elsewhere in this issue of the Federal Register. In a separate document also published in this issue of the Federal Register, FDA is announcing the availability of a guidance document to assist applicants in determining how they should report changes to an approved license application for biologic products other than well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products under the proposed rule. FDA does not intend for these draft guidance documents to be used at this time. The agency is providing these guidance documents for public comment only.

DATES: Written comments by April 29, 1996.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Draft Guidance; Changes to An Approved Application for Well-Characterized Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products'' to the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1800 or call FDA's automated information system at 800–835–4709. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft 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.

Persons with access to INTERNET may request that the draft guidance document be sent by return E-mail by sending a message to ''Character@A1.CBER.FDA.GOV''. The draft guidance document may also be obtained through INTERNET via File Transfer Protocol (FTP). Requestors should connect to the Center for Drug Evaluation and Research (CDER) using the FTP. The Center for Biologics Evaluation and Research (CBER) documents are maintained in a subdirectory called CBER on the server, ''CDVS2.CDER.FDA.GOV'' (150.148.24.202). The ''READ.ME'' file in that subdirectory describes the available documents that may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 document (*.w51), or both. A sample dialogue for obtaining the READ.ME file with a text-based FTP program would be:

FTP CDVS2.CDER.FDA.GOV
LOGIN: CHARACTER
<PASSWORD:CHARACTER><''Your E-mail address''>
BINARY
CD CBER
GET READ.ME
EXIT

The draft guidance document may also be obtained by calling the CBER FAX Information System (FAX-ON-DEMAND) at 301–594–1939 from a touch tone telephone.

FOR FURTHER INFORMATION CONTACT:

Tracey H. Forfa or Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074; or

Yuan Yuan Chiu, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

Dated: January 16, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–1581 Filed 1–25–96; 10:42 am]

BILLING CODE 4160–01–F

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21 CFR Parts 600 and 601

[Docket No. 95D–0052]

Changes To An Approved Application; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Draft Guidance; Changes to An Approved Application.'' The draft guidance is intended to assist applicants in determining how they should report changes to an approved license application under the proposed revision to the biologics regulations issued elsewhere in this issue of the Federal Register. FDA does not intend for this draft guidance to be used at this time. The agency is providing this guidance at this time for public comment only.

DATES: Written comments by April 29, 1996.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Draft Guidance; Changes to An Approved Application'' to the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or call FDA's automated information system at 800–835–4709. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft 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.

Persons with access to INTERNET may request that the draft guidance document be sent by return E-mail by sending a message to ''Changes@A1.CBER.FDA.GOV''. The draft guidance document may also be obtained through INTERNET via File Transfer Protocol (FTP). Requestors should connect to the Center for Drug Evaluation and Research (CDER) using the FTP. The Center for Biologics Evaluation and Research (CBER) documents are maintained in a subdirectory called CBER on the server, ''CDVS2.CDER.FDA.GOV'' (150.148.24.202). The ''READ.ME'' file in that subdirectory describes the available documents which may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 document (*.w51), or both. A sample dialogue for obtaining the READ.ME file with a text-based FTP program would be:

FTP CDVS2.CDER.FDA.GOV
LOGIN: CHANGES
<PASSWORD:CHANGES> <''Your E-mail address''>
BINARY
CD CBER
GET READ.ME
EXIT

The draft guidance document may also be obtained by calling the CBER FAX Information System (FAX-ON-DEMAND) at 301–594–1939 from a touch tone telephone.

FOR FURTHER INFORMATION CONTACT:

Tracey H. Forfa or Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074; or

Yuan Yuan Chiu, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 6, 1995 (60 FR 17535), FDA published a guidance document intended to provide guidance to applicants on which changes in manufacturing procedures and establishments may be implemented with and/or without prior approval by the Director, CBER under § 601.12 (21 CFR 601.12). The Federal Register notice and guidance document were intended to reduce the burden of reporting changes on manufacturers and to facilitate the approval process.

In a continuing effort to achieve the reduction in reporting burden and to respond to comments received on the April 6, 1995, guidance document, FDA is proposing a revision to § 601.12 published elsewhere in this edition of the Federal Register. In addition, FDA is announcing the availability of a draft guidance document entitled, ''Changes to An Approved Application.'' The guidance document sets forth CBER's current interpretation of the proposed rule to amend § 601.12 as it applies to biologic products other than those considered to be well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology products. The reporting mechanisms proposed in the rule are based on the potential for the change to affect a product's safety, purity, potency, and effectiveness. In a separate document also published in this issue of the Federal Register, FDA is announcing

the availability of a guidance document to assist applicants in determining how they should report changes to an approved application for a well-characterized therapeutic recombinant DNA-derived and monoclonal antibody biotechnology product under the proposed rule.

The guidance document will provide guidance to applicants in determining how a change to a product, production process, equipment, facility, responsible personnel, or labeling should be reported to FDA under the proposed revision to § 601.12.

As stated previously, FDA is providing this draft guidance document for comment only. The document is not intended to be used at this time. FDA intends to review the comments received on the proposed rule and this draft guidance document and issue a final rule prescribing the requirements for the reporting changes to an approved license application. A revised guidance document would also be made available at the time of issuance of the final rule. As with other procedural guidance documents, FDA does not intend that this guidance document would be all-inclusive. Alternative approaches could be warranted in specific situations, and certain aspects might not be applicable to all situations. If an applicant believed the reporting procedure described in this guidance document was inapplicable to a specific change for a particular product, the applicant could provide, for CBER's consideration, information supporting an alternative categorization. An applicant also could discuss proposed changes with the agency to prevent expenditure of money and effort on activities that later might be determined to be unacceptable by FDA. The Center for Biologics Evaluation and Research would continue to review submissions on a case-by-case basis. This document would not bind FDA and would not create or confer any rights, privileges, or benefits on or for any person, but would be intended for guidance.

Interested persons may, on or before April 29. 1996, submit to the Dockets Management Branch (address above) comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. The draft guidance ''Changes to An Approved Application'' and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA plans to hold an open public meeting during the comment period to discuss the proposed revision to § 601.12 and the draft guidance document. The time and location of this meeting will be announced in an upcoming issue of the Federal Register.

FDA will consider any comments received in determining whether revisions to the guidance document are warranted. FDA will announce the availability of any revised guidance document in the Federal Register.

Dated: January 16, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–1583 Filed 1–25–96; 10:43 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 281

RIN 1510–AA48

Foreign Exchange Operations

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes regulations to amend the administration of the purchase, custody, deposit, transfer, sale and reporting of foreign exchange (including credits and currencies) by executive departments and agencies. The specific section being amended addresses the limitation on the purchase of foreign exchange. Currently, foreign exchange acquired by agencies shall be placed with accountable officers. Unless otherwise authorized by the Secretary of the Treasury, no accountable officer shall purchase foreign exchange which, together with the balance on hand at the time of purchase, would exceed estimated requirements for a 30 day period. This proposed revision would restrict accountable officers to estimated requirements for a 5–7 business day period unless they have obtained a specific waiver of this requirement from the Secretary of the Treasury.

DATES: Comments on this proposed rule must be received on or before February 28, 1996.

ADDRESSES: All written comments on this proposed rule should be addressed to Michael C. Salapka, Manager, International Funds Branch, Financial Management Service, Prince George Metro Center II Building, Room 5A19, 3700 East-West Highway, Hyattsville, MD 20782, or by FAX to the attention of Bruce Riedl at (202) 874–8023.

FOR FURTHER INFORMATION CONTACT: Michael C. Salapka, (202) 874–8919, (Manager, International Funds Branch); or Bruce Riedl, (202) 874–8918, (Senior Advisor).

SUPPLEMENTAL INFORMATION:

Background

To protect the Government from risk, 31 CFR § 281.7(c), currently limits accountable officers to purchasing foreign exchange only in an amount which, together with the balance on hand, does not exceed the estimated requirements for a 30 day period. However, risk reduction and improvements in cash management dictate that a shorter time period be established. Specifically, in order to (1) minimize local currency operating balances held in designated depositaries; (2) minimize losses due to rate devaluations; and, (3) avoid premature drawdowns on Treasury's General Account, all accountable officers shall ensure that the amount of foreign exchange purchased with dollars, together with the balance on hand, is commensurate with estimated requirements for a 5–7 business day period. This will result in interest savings to the Government. Further, balances in the local currency operating account held at designated depositaries will be kept as close to zero as possible without incurring overdrafts to the account.

In certain situations, the administrative costs, local banking regulations, or possible volume discounts appear to require maintaining balances in excess of the 5–7 day amount. If circumstances require exceeding this limit, the accountable officer must obtain a specific waiver of this requirement from Treasury.

Rulemaking Analysis

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a Regulatory Assessment is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required. This change primarily affects executive departments and agencies.

List of Subjects in 31 CFR Part 281

Foreign exchange, banks, banking.

Accordingly, part 281 of title 31 is proposed to be amended as follows:

PART 281—FOREIGN EXCHANGE OPERATIONS

1. The authority citation for part 281 is revised to read as follows:

Authority: 22 U.S.C. 2363; 31 U.S.C. 3513; E.O. 10488, 18 FR 5699, 3 CFR 1949–1953, Comp., p. 972; E.O. 10900, 26 FR 143, 3 CFR 1959–1963, Comp., p. 429.

2. Section 281.7(c) is revised to read as follows:

§ 281.7 Limitations.

* * * * *

(c) Unless otherwise authorized by the Secretary, no accountable officer shall purchase foreign exchange which, together with the balance on hand at the time of purchase, would exceed estimated requirements for a 5–7 business day period.

* * * * *

Dated: December 4, 1995.

Russell D. Morris,

Commissioner.

[FR Doc. 96–899 Filed 1–26–96; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX43–1–6275; FRL–5403–7]

Clean Air Act Limited Approval and Limited Disapproval of 15 Percent Rate of Progress and Contingency Plans for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes a limited approval and limited disapproval of the State Implementation Plan (SIP) revisions submitted by the State of Texas to meet the 15 Percent Rate of Progress Plan requirements of the Clean Air Act. The EPA is proposing a limited approval because the 15 Percent Plans, submitted by Texas, will result in significant emission reductions from the 1990 baseline and thus, will improve air quality. Simultaneously, the EPA is proposing a limited disapproval of the 15 Percent Plans because they fail to demonstrate sufficient reductions of area-wide Volatile Organic Compounds (VOC) to meet the 15 Percent Rate of Progress requirements. Also, the EPA is proposing a limited approval of the contingency plans because these plans, if implemented, will result in emission reductions that will improve air quality. Simultaneously, the EPA is proposing a limited disapproval of the contingency plans because they fail to demonstrate that the required three percent reduction of VOC emissions will be achieved if the plans are implemented.

The EPA is also proposing a limited approval of the specific control measures in the 15 Percent and Contingency Plans because these rules will strengthen the SIP. A final action on these control measures will incorporate these rules into the Federally approved SIP.

DATES: Comments on this proposed action must be post marked by March 29, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 72202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION:

Background:

Section 182(b)(1) of the Clean Air Act (CAA), as amended in 1990, requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide VOC emissions by 15 percent from a 1990 baseline. The plans were to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years of enactment or November 15, 1996. The Clean Air Act also sets limitations on the creditability of certain types of reductions. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure of gasoline promulgated prior to 1990. Furthermore, the CAA does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M) or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

In addition, section 172(c)(9) of the Clean Air Act requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved or if the standard is not attained.

In Texas, four moderate and above ozone nonattainment areas are subject to the 15 Percent Rate of Progress requirements. These are the Beaumont/Port Arthur (serious), Dallas/Fort Worth (moderate), El Paso (serious), and the Houston/Galveston (severe) areas. Texas adopted measures for the 15 Percent Rate of Progress Plans and the required contingency measures in two phases. Phase I was submitted to the EPA on November 13, 1993, and contained measures achieving the bulk of the required reductions in each of the nonattainment areas. Phase II was submitted May 9, 1994. The Phase II submittal was to make up the shortfall in reductions not achieved in the Phase I measures. The combination of the Phase I and Phase II measures was ruled complete by the EPA on May 12, 1994.

On August 3, 1994, Texas submitted rules for the review and processing of Alternate Means of Control (AMOC). These revisions provide for the EPA review and approval of AMOC plans. On November 9, 1994, Texas submitted a narrative explanation and justification of the AMOC process with their plan to reduce emissions an additional 9 percent in the Houston/Galveston and Beaumont/Port Arthur Areas.

The EPA has analyzed the November 13, 1993, submittal; May 9, 1994, submittal; August 3, 1994 submittal; and the AMOC narrative portion of the November 9, 1994, submittal; and believes that these proposed 15 Percent Plans and Contingency Plans can be given limited approval because they overall would strengthen the SIP by achieving reductions in VOC emissions. The 15 Percent Plan and Contingency Plans do not, however, achieve the total required percentage of reductions. Therefore, the EPA is proposing a limited disapproval of the plans. Also, the control measures in the four 15 Percent Plans and Contingency Plans cannot be completely approved, because they do not meet all of the underlying conditions of the Clean Air Act. Therefore, the EPA is only proposing limited approval of the control measures in the 15 Percent Plans and the Contingency Plans as a strengthening of the SIP. The EPA is not taking any action on whether the control measures included in these plans comply with the

RACT requirements of CAA section 182(b)(2), or any other underlying CAA requirement. In addition, the EPA is proposing limited approval of only the AMOC portion of the November 9, 1994, submittal as a strengthening of the SIP. The EPA is taking no action on any other portion of the November 9, 1994, submittal. For a complete discussion of EPA's analysis of the State submittals, please refer to the Technical Support Document for this action. A summary of the EPA's findings follows.

Analysis

Emission Inventory

The base from which States determine the required reductions in the 15 Percent Plan is the 1990 emission inventory. The EPA approved the Texas 1990 base year inventory on November 8, 1994 (59 FR 55586). The inventory approved by the EPA and the one used in the 15 Percent Rate of Progress plans are the same except for some minor differences. The inventory used in the 15 Percent Rate of Progress Plans is slightly larger than the approved inventory. So it results in slightly more required reductions. It is, therefore, a somewhat conservative approach.

Calculation of Target Level Emissions

Texas subtracted the non-creditable reductions from the FMVCP and Reid Vapor Pressure (RVP) program from the 1990 inventory. This subtraction results in the 1990 adjusted inventory. The total emission reduction required to meet the 15 Percent Rate of Progress Plan requirements equals the sum of 15 percent of the adjusted inventory, plus reductions to offset any growth that takes place between 1990 and 1996, plus any reductions that result from corrections to the I/M or VOC RACT rules. Table 1 summarizes the calculations for the nonattainment areas in Texas.

TABLE 1.—CALCULATION OF REQUIRED REDUCTIONS (TONS/DAY)

	Dallas/Fort Worth	El Paso	Beaumont/ Port Arthur	Houston/ Galveston
1990 Emission Inventory	644.93	87.24	342.63	1179.27
1990 Adjusted	542.68	73.97	331.16	1090.94
15% of adjusted	81.40	11.10	49.67	163.64
RACT and I/M Corr	.99	1.57	4.28	11.83
1996 Target	460.29	61.30	277.21	915.47
1996 [1] Projection	606.22	82.68	324.89	1147.71
Required Reduction	145.93	21.38	47.68	232.24

[1] 1996 forecasted emissions with growth and pre-1990 controls.

Measures Achieving the Projected Reductions

For each of the four nonattainment areas, Texas provided a plan to achieve the required reductions. The specific measures adopted in each of the areas vary with the combination of sources in each area. The following is a concise description of each control measure Texas used to achieve reductions credit in the plan. The EPA is proposing limited approval of the following control measures as a strengthening of the SIP and agrees with the emission reductions projected in the State submittals for these measures.

Stage II Vapor Recovery

This measure requires the installation and operation of vapor recovery equipment on gasoline pumps to reduce the emissions during refueling. The rules of the program are contained in 30 TAC Chapter 115.241–259. The EPA approved these rules in the Federal Register on April 15, 1994, (59 FR 17940). The EPA agrees with the reductions projected for this measure in the Beaumont/Port Arthur, Dallas/Fort Worth and Houston areas. In the El Paso area, the EPA believes that too much credit has been claimed in the proposed SIP revision. (see noncreditable reductions).

Bakeries

Texas made revisions to its vent gas control rules (30 TAC 115.121–129) to require controls on commercial bakeries. These bakeries can be significant sources of VOC emissions in the form of ethanol produced by yeast in the leavening process. The ethanol is liberated primarily when the bread is baked in the oven. These rules apply to major source bakeries in the Dallas/Fort Worth and Houston/Galveston areas. Major sources are defined as those emitting more than 100 tons/year in the Dallas/Fort Worth area and more than 25 tons/year in the Houston area. These rules require that the bakeries reduce emissions by 30 percent from the levels reported in the 1990 emissions inventory. Each of the affected bakeries has submitted control plans to achieve the required reductions. Upon the EPA's approval of these rules, these control plans will become Federally enforceable. The control plans all rely on some form of incineration and should easily achieve the expected reductions. The EPA proposes to approve these rules as a strengthening of the SIP and agrees with the associated projected emission reductions.

Offset Lithography:

These rules, contained in 30 TAC 115.442–449, regulate emissions from offset printing operations in the El Paso area. This control measure was also adopted as a contingency measure in the Houston/Galveston and Beaumont/Port Arthur areas. These operations produce a wide variety of products such as magazines, newspapers and books. The rules regulate emissions from the fountain solution, clean up solvent, and dryer exhaust. The EPA believes that these rules will result in enforceable emission reductions. The EPA is proposing to approve these rules as a strengthening of the SIP and agrees with the associated projected emission reductions.

Consumer Products

Under section 183(e)(9) of the Clean Air Act, states may develop and submit to the Administrator a procedure under state law to regulate consumer and commercial products, provided they consult with the EPA regarding other State and local regulations for consumer and commercial product rules. Throughout the process of regulating consumer and commercial products, Texas has consulted the EPA and other states to utilize the collective expertise of other regulatory bodies in drafting and adopting their regulation. The rule applies to any person offering a consumer or commercial product for sale, supply, distribution, manufacture or use in Texas. Consumer and

commercial products include all VOC-emitting products used in homes, businesses, institutions, and a multitude of commercial manufacturing operations. The Texas rules, found at 30 TAC 115.600–625 apply standards for the VOC content of the products in 26 categories.

The rules allow the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) to grant Innovative Product Waivers to exempt products from the VOC content requirements of this rule; if the Executive Director determines the innovative product emits, equal to or less than, the emissions from a representative consumer product that is in compliance. In general, the EPA can grant approval of a rule that allows the State discretion to grant variances or exemptions without a full SIP revision, only if the rule contains specific conditions and a replicable procedure for the granting of the waivers. The EPA does not believe that the Texas consumer/commercial product rule contains such a replicable procedure that the EPA could use to verify a waiver was merited. The EPA believes it is appropriate to approve the rule as a strengthening of the SIP in this specific case, because EPA intends to promulgate national rules for the regulation of consumer and commercial products under section 183 of the CAA in the near future. Thus, requiring the state to develop a replicable waiver procedure now would duplicate efforts that will also occur through promulgation of the national rules. The EPA is proposing to approve these rules as a strengthening of the SIP and agrees with the projected emission reductions.

Automobile Refinishing:

Texas has adopted measures to reduce emissions from repainting cars at auto body repair shops. Reductions are achieved through two mechanisms. First, limits on the VOC content of paints and primers have been set. Second, the application equipment must be High Volume Low Pressure equipment or equivalent. This equipment tends to increase the transfer efficiency, or the percentage of paint that actually adheres to the vehicle. By getting a higher percentage of the paint on the car, less paint is used and less VOC is emitted to the atmosphere. The rules also require special equipment be used for equipment cleaning which will result in lower solvent emissions. These requirements contained at 30 TAC 115.421–422 have been adopted for all four nonattainment areas.

In addition to the State rules, the EPA intends to promulgate a national rule that will further limit the VOC content of coatings. The EPA believes the combination of the emission reductions from the State rules and creditable emission reductions from future national rules will result in the levels projected in the State's submittal. The EPA is proposing to approve these State rules as a strengthening of the SIP.

RACT Catch Up

Section 182(b)(2)(B) of the Clean Air Act requires that moderate and above ozone nonattainment areas adopt rules to require RACT for all VOC sources in the area covered by any Control Technique Guideline (CTG) issued before the date of the enactment of the Clean Air Act Amendments of 1990. In practice, this required areas that were considered rural under pre-amendment guidance to ''catch up'' by adopting the same requirements as urban nonattainment areas. Newly designated nonattainment areas were required to adopt rules based on the pre-amendment CTG's. Also, RACT was to be applied to smaller sources of emissions in some instances because the amount of emissions defining a major source in serious and above nonattainment areas was reduced by the Clean Air Act Amendments of 1990.

In Texas, Beaumont/Port Arthur was a rural nonattainment area prior to the 1990 amendments. Also, the following counties were added to the nonattainment areas based on the Clean Air Act amendments of 1990; Collin, Denton, Fort Bend, Liberty, Montgomery, Waller, Chambers and Hardin. Texas submitted rules to meet the RACT catch up requirements. The EPA approved these submittals on May 8, 1995 (60 FR 12438). Emission reductions from these rule changes are creditable toward the Rate of Progress requirement. The EPA agrees with the reductions projected in the 15 Percent Rate of Progress plans due to RACT catch up rule changes.

Rule Effectiveness Improvements

Rule Effectiveness (RE)is an adjustment to an emission reduction calculation that compensates for the fact that facilities are not fully in compliance with a given rule 100 percent of the time. Texas expects that compliance will improve from 1990 levels for various reasons, the most important of which is a large projected increase in State enforcement staff. To insure that real emission reductions have occurred, the State must commit to performing a study to confirm that the rule has achieved the expected effectiveness. Texas has committed to conducting detailed inspections of in-use control efficiency during annual inspections and to revising the State's upset/maintenance rule to require more record keeping. These confirmation studies will be expected to be submitted with the State's Milestone Compliance Demonstration. The EPA believes the projected emission reductions are appropriate.

Wood Parts and Products Coatings

These rules, found at 30 TAC 115.421(a)(13), limit the VOC content of wood coatings. The rules apply to wood part and product manufacturers in the Houston, El Paso and Dallas/Fort Worth areas. Texas has projected a 20 percent reduction in emissions due to the rules, which the EPA believes is appropriate. The EPA is proposing to approve these rules as a strengthening of the SIP. The EPA also agrees with the projected reductions.

Fugitive Emission Control

115.352–115.357 These rules, contained at 30 TAC 115.352–115.357, tighten leak detection and repair requirements in petroleum refining and petrochemical processes. Texas changed the leak detection minimum from 10,000 ppm to 500 ppm for valves. The EPA is proposing to approve these rules as a strengthening of the SIP. The EPA also agrees with the projected reductions.

Municipal Waste Landfills

These rules, contained at 30 TAC 115.152–115.159, limit emissions from municipal waste landfills. The decomposition of municipal waste generates large amounts of methane and significant amounts of VOC's. These emissions can be captured and recycled or flared. The EPA has proposed a New Source Performance Standard for new landfills, and also proposed requirements which States will be required to adopt for existing landfills under section 111(d) of the CAA. Texas has proceeded with rules in advance of final national rules so the reductions can be achieved by 1996. The EPA is proposing to approve these rules as a strengthening of the SIP. The EPA also agrees with the projected reductions.

SOCMI Reactor and Distillation

These rules require control of emissions from reactor and distillation vents in the synthetic organic chemical manufacturing industry. These rules were based on a draft CTG that has since been finalized. The EPA is proposing approval of these rules as a strengthening of the SIP. The EPA also agrees with the projected emission reductions.

Carswell Fire Training

This emission reduction is included in the Rate of Progress plan because Carswell Air Force Base no longer conducts fire training exercises. A letter of commitment from the Air Force Base, adopted into the Dallas/Fort Worth 15 percent plan, documents that these training exercises are no longer conducted at the base and will not be conducted in the future. The EPA also agrees with the projected emission reductions.

Degassing or Cleaning of Vessels (115.541–115.549)

These rules require the control of emissions that occur during the degassing or cleaning of stationary or transport vessels by the capture and either recovery or destruction of the resulting emissions. The EPA is proposing to approve these rules as a strengthening of the SIP. The EPA also agrees with the projected reductions.

Outdoor Burning

Texas has calculated the reduction in VOC emissions that have occurred due to the more stringent outdoor burning restrictions that have been implemented in the El Paso area as required by the El Paso PM–10 SIP approved on January 18, 1994 (59 FR 2532). The EPA also agrees with the projected emission reductions.

Gasoline Terminals

Texas projected emission reductions from tightening the control requirements contained in 30 TAC 115.211–219 for vapor recovery devices on gasoline terminals used by gasoline powered transport trucks. Various other changes have also been made to strengthen these rules. The EPA is proposing to approve these revisions to the State rules as a strengthening of the SIP. The EPA also agrees with the emission reductions associated with these measures.

Reformulated Gasoline

Section 211(k) of the CAA requires that after January 1, 1995, in severe and above ozone nonattainment areas, only reformulated gasoline be sold or dispensed. This gasoline is reformulated to burn cleaner and produce fewer evaporative emissions. As a severe area, Houston will benefit from these emission reductions. The EPA agrees with the emission reductions that the State has projected for the Houston area.

Section 211(k)(6) allows other nonattainment areas to ''opt in'' to the program. On June 11, 1992, the Governor of Texas asked that the Dallas/Fort Worth area also participate in the program. This request was approved in the Federal Register on October 8, 1992 (57 FR 46317). These emission reductions are fully creditable toward the Dallas/Fort Worth Plan. The EPA agrees with the reductions that have been projected due to the introduction of reformulated gasoline in the Dallas/Fort Worth area.

Reid Vapor Pressure Control

Texas has enacted rules (30 TAC 115.252–115.259) lowering the allowed RVP of gasoline sold in the El Paso nonattainment area. RVP is a measure of the tendency of gasoline to evaporate. Lowering the RVP results in lower VOC emissions and the reductions can be credited to the plan. The rules require the gasoline sold in El Paso between June 1 and September 15 of each year to have an RVP of no greater than 7.0 psi.

State governments are generally preempted under section 211(c)(4)(A) of the CAA from requiring gasoline sold in any area in a State to meet an RVP standard different from the federal standard. However, under 211(c)(4)(C) a State can require a more stringent RVP standard in its SIP if the more stringent standard is necessary to achieve the National Ambient Air Quality Standard (NAAQS) in a particular nonattainment area. The State can make this demonstration of necessity by providing evidence that no other measures exist that would bring about timely attainment, or that such measures exist, are technically possible to implement, but are unreasonable or impracticable. Economic consequences may be considered in this demonstration. If a State makes this demonstration, it can lower the volatility to whatever standard is necessary for the nonattainment area.

In addition to the control measures mandated by the CAA, Texas has compiled a Control Measure Catalog for each of its nonattainment areas and has graded each measure on its viability for use in these 15 Percent Plans. The grade was based on six criteria; cost of implementation, reactivity, emission reductions potential, technical feasibility, toxicity, and enforceability. The Catalog identified fourteen control measures for the El Paso area; the El Paso 15 Percent Plan contained all of these measures and an additional ten for a total of twenty-four. The EPA believes the State has considered all of the reasonably available control measures.

Included among these control measures was control of VOC's from fuel. In the absence of fuel controls, it was projected there would be insufficient VOC reductions to achieve the 15 percent SIP target and there may ultimately be insufficient VOC reductions to achieve attainment of the NAAQS. The State considered two fuel control measures: opting into the federal reformulated gasoline program (RFG) or implementing a Low RVP (7.0 psi) Program. The State, with help and input from local area refineries, determined the two programs would generate the same VOC emission reductions in the El Paso ozone nonattainment area. However, as explained below, El Paso may receive additional VOC reductions from the Low RVP Program when the Juarez area is considered. The local area refineries expressed support for the Low RVP Program over an RFG Program because of economic reasons as outlined below.

El Paso and Juarez, Mexico are essentially one air shed from an air quality standpoint. Modeling submitted by the State demonstrates El Paso is in attainment of the NAAQS for ozone but for emissions from Juarez and suggests that reduction of VOC emissions from Juarez will be needed for the El Paso area to attain the NAAQS for ozone. This modeling, in support of a 179B demonstration, has been submitted by the State and is pending before the EPA. Action on this submittal will be taken in a separate Federal Register notice.

Currently, Juarez is receiving in excess of 80 percent of its gasoline from refineries located in El Paso. The local area refineries estimated the cost to produce low RVP gasoline would be about one cent per gallon over that of conventional gasoline. The capital investments and other costs necessary for the production of RFG was estimated to increase the cost of RFG by about four cents per gallon. The State concluded that the Juarez market would accept the small increase in the cost of low RVP gasoline and El Paso would be subjected to VOC emissions from Juarez based on gasoline with an RVP of slightly more than 7.0 psi. Contrarily, the State concluded that the higher cost of RFG would likely result in Juarez requesting conventional gasoline from the El Paso refineries, with an RVP of 9.0 psi or higher, rather than RFG. Because the low RVP gasoline is more likely to be accepted in Juarez, it is expected to generate additional reductions that will be needed for attainment of the NAAQS for ozone in El Paso beyond those reductions generated by an RFG program. In a letter to the Chairman of the Texas Natural Resource Conservation Commission from the Director of the EPA's Office of Air Quality Planning and Standards, dated June 23, 1995, the EPA indicated the State could, with conditions, use the

expected emission reductions from Juarez to meet the requirements of the 15 Percent SIP. In a future submittal, Texas will need to substantiate and quantify the expected reductions from the Juarez area as a result of the Low RVP Program.

El Paso is also a Carbon Monoxide nonattainment area and Texas has implemented an Oxygenated Fuel Program with a control period from September 1 of one year to March 31 of the next. The monitoring and enforcement of the program has been delegated to the El Paso City/County Health and Environmental District (District). The District has dedicated resources, personnel and equipment, to this program. The State also intends to delegate the monitoring and enforcement of the Low RVP Program to the District. Since the Oxygenated Fuel Program is a winter program and the Low RVP Program is a summer program the District will be able to utilize the same resources in both programs resulting in a savings of administrative costs. Thus the State is implementing strategies specific to their pollution abatement needs; an Oxygenated Fuel Program in the winter months and a Low RVP Program during the high ozone period of the summer.

For the reasons stated above, the EPA believes the State has satisfied the requirements of section 211(c)(4)(C) to demonstrate that the Low RVP Program is necessary to achieve the NAAQS for ozone in the El Paso area. The State has demonstrated that all other reasonable and available sources of VOC reductions have been considered and used; and that the only other alternative available for VOC emissions reductions, the RFG Program, will not yield VOC reductions in Juarez that will be needed for the eventual attainment of the NAAQS of ozone in the El Paso area. The EPA is proposing limited approval of the State's Low RVP Program. The EPA agrees with the projected emission reductions, in the El Paso area from the Low RVP program. However, if the State wishes to credit emission reductions occurring in the Jaurez area, due to the low RVP program, as outlined in the EPA's June 23, 1994 letter; Texas will, in future SIP revisions, need to substantiate and quantify the expected reductions from the Juarez area as a result of the Low RVP Program.

Tier I Federal Motor Vehicle Control Program

The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724, June 5, 1991). Since the standards were adopted after the CAA amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. The EPA agrees with the State's projected emission reductions.

Transportation Control Measures (TCM)

The State has included several TCM's such as high occupancy vehicle lanes, traffic signal and intersection improvements in the plans that result in emission reductions in the Dallas/Fort Worth, Houston, and El Paso nonattainment areas. The emission reductions from TCM's are approximately 6.94 tons/day for Dallas/Fort Worth, 0.30 tons/day for El Paso, and 0.10 tons/day for the Houston area. In addition, TNRCC has adopted a set of TCM rules which were submitted under separate cover as a SIP revision for the EPA's approval. The TCM rules will be supplementing the control strategy SIPs in order to assure implementation of the TCM's. The EPA has reviewed the TCM's included in the 15 Percent Rate of Progress plans and agrees with the projected reductions. The EPA is not, however, taking action at this time on the TCM rules. The EPA will be taking action on the TCM rules in a separate Federal Register notice.

Small Gas Utility Engines

Texas calculated emission reductions that were expected to result from a State rule requiring that cleaner burning small gas utility engines be manufactured for sale in Texas. The State has since revised the rule to allow for a later compliance date. This could have resulted in a loss of projected emission reductions. The EPA, however, believes that the expected emission reductions still occurred during 1994 and 1995 and will occur during 1996, as a result of small engine modifications made by the industry's major manufacturers. These reductions are the result of actions taken by the industry in advance of the Federal Emission Standards for New Non-road Spark-Engines at or below 25 Horsepower (Phase I) that will take effect in the 1997 model year. To demonstrate that reductions have occurred, the industry has provided sufficient Texas specific sales data and engine specification information to the EPA demonstrating that significant emission reductions are expected to occur during the 1994, 1995, and 1996 calendar years. The EPA agrees these emission reductions will occur. The EPA is taking no action on Texas' small engine rule because it now largely duplicates already promulgated Federal requirements.

Off-Road Reformulated Gasoline

The use of reformulated gasoline will also result in reduced emissions from off-road engines such as outboard motors for boats and lawn mower engines. The EPA agrees with the reductions projected in the plans for off-road engines utilizing reformulated gasoline.

Tier III Jet Engine Standards

Aircraft are required by Federal Aviation Administration (FAA) rules to have engines that meet Tier III standards. These standards result in engines designed to be both quieter and less polluting. These rules contain a phase in schedule with full compliance required by the year 2000. The EPA agrees with the projected emission reductions contained in the State submittal.

Benzene National Emission Standards for Hazardous Air Pollutants (NESHAPS)

In January 1993, the EPA promulgated 40 CFR 61 subpart FF, National Emission Standard for Benzene Waste Operations. Texas has quantified the VOC reductions that will result from these rules in the Beaumont area. The EPA agrees that these reductions will occur.

Measures Achieving Less Than the Projected Emission Reductions

For the following control measures, the EPA believes that the amount of emission reduction that has been claimed in the State submittals is not appropriate or is inadequately documented. The EPA does not agree with the projected emission reductions that are in excess of those which the EPA believes will actually occur.

Architectural and Industrial Maintenance Coatings (AIM)

Emission reductions have been projected for AIM coatings due to the expected promulgation by the EPA of a national rule. In a memo dated March 22, 1995, the EPA provided guidance on the expected reductions from the national rule. It is expected that emissions would be reduced by 20 percent. Texas has taken 25 percent reduction credit in its plan. This was based on previous guidance from the EPA that 25 percent reductions would occur. Since the 20 percent more accurately reflects the emission reductions that will occur in practice, the EPA does not agree with the reductions projected in excess of 20 percent.

Vehicle Inspection and Maintenance (I/M)

The plans in each of the four areas relied on revised vehicle I/M programs that were developed by the State of Texas and submitted to the EPA on November 12, 1993, and on March 9, 1994. The EPA evaluated these programs and approved them into the SIP on August 22, 1994. Texas began implementing these programs in January, 1995. The Texas legislature enacted a bill on May 1, 1995, giving the governor authority to develop a revised program. During the interim, the legislation reinstated the I/M programs in existence prior to January 1, 1995. In June 1995, the TNRCC adopted emergency rules to reinstate the pre-1995 programs. As a result of these actions, the emission reductions that were expected to result cannot be expected to be achieved. Thus, the EPA cannot agree with the projected emission reductions for vehicle inspection and maintenance.

Employee Commute Options

On March 7, 1995 (60 FR 12442), the EPA approved a revision to the Texas SIP incorporating an Employee Commute Options/Employer Trip Reduction Program. The program is required in all severe and extreme ozone nonattainment areas. For Texas, this affects the Houston/Galveston nonattainment area. On April 18, 1995, the Governor of Texas signed legislation which suspended the program for 180 days and allowed additional 45 day suspensions of the program at the discretion of the Governor. The TNRCC is in the process of restructuring the program. Due to the suspension of the program, the 1.81 tons per day of emission reductions claimed for the Houston/Galveston nonattainment area cannot be expected to be achieved. Thus, the EPA cannot agree with the emission reductions projected for this program in the Houston/Galveston 15 Percent Rate of Progress Plan.

Marine Vessel Loading

These rules are designed to reduce emissions that result from the loading of VOC's into marine vessels in the Houston area. The rules control sources that emit more than 100 tons/year. The EPA believes that the rules will result in enforceable emission reductions toward the 15 Percent Rate of Progress Plan for Houston. The EPA is therefore, proposing to approve these rules as a strengthening of the SIP.

Texas, however, projected reductions from both points (defined as greater than 25 tons per year) and area (less than 25 tons per year) sources, when the rule only applies to 100 ton/year or greater sources. The smaller area sources, those that emit less than 25 tons per year, would remain uncontrolled. The EPA cannot ascertain what portion of the emission reductions claimed from the point source inventory are from sources that emit between 25 and 100 tons/year but expects that this is a relatively small amount. Therefore, the EPA can agree with the emission reductions associated with marine vessel loading operations contained in the point source inventory only with the understanding that before a final action, the State will demonstrate that no emission reductions are being projected for sources in the 25–100 ton/year emissions range. The EPA cannot agree with the projected emission reductions associated with area source marine vessel loading operations.

The EPA is aware that Texas now believes that all of the marine vessel loading emissions are covered in the point source inventory and that the area source inventory is zero. If this is the case, future SIP revisions should reflect this adjustment and the projected emission reductions should be adjusted accordingly.

Industrial Wastewater

Texas has adopted rules for control of emissions from industrial wastewater. These rules were based on a draft Control Technique Guideline for the control of emissions from wastewater. The TNRCC rule applies to VOC emissions from wastewater from the organic chemicals, plastics, and synthetic fibers manufacturing industry (Standard Industrial Classification codes 2821, 2823, 2824, 2865 and 2869), pesticide manufacturing industry, petroleum refining industry, pharmaceutical manufacturing industry, and hazardous waste treatment, storage, and disposal facilities. The essential concept in the TNRCC rule is to suppress VOC emissions from all wastewater streams that have either greater than 10,000 ppm VOC at any flow rate or 1000 ppm VOC and a flow rate greater than 10 liters/minute. The rule encourages facilities to remove the VOC's from the stream before they are emitted to the air. The 15 Percent Rate of Progress plans claim a 90 percent overall control efficiency for this measure.

In contrast, the EPA expects that the overall reductions expected from control of wastewater streams using the exemption cutoffs in the Texas rule are 43 percent for the organic, chemicals, plastics and synthetic fibers industry, and 41 percent control for the petroleum refining industry. This assumes that the State rule is based on a control program as effective as the wastewater emission control program in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (40 CFR 63.100). This rule is generally referred to as the Hazardous Organic NESHAP (HON). The Texas rule, however, is not as stringent in its control requirements when compared to requirements expected in the draft CTG or the HON. Chief among the differences is that the Texas rule merely requires that streams be treated to remove VOC down to a concentration of 1000 ppm. In contrast, the HON requires that the VOC concentration in any stream with a concentration greater than 1000 ppm, must be reduced to the level that can be achieved by a steam stripper. This level can be far lower than 1000 ppm. Even if the Texas control program were similar to the program in the HON for the control of hazardous air pollutants, it would be expected to get less than the 90 percent emission reductions projected by the State because of the exemption levels that were chosen.

The EPA is proposing limited approval of the Texas rules for control of wastewater emissions as a strengthening of the SIP that will result in emission reductions. The EPA cannot agree with all of the emission reductions that have been projected. From the information provided, the EPA cannot ascertain what the actual emission reductions from this program will be. The EPA, perhaps, could agree to emission reductions based on a control efficiency of 42 percent drawn from an average of the petroleum refinery and Synthetic Organic Chemical Manufacturing Industry emission reduction estimates in the draft CTG. However, the Texas wastewater rules could result in less control than contemplated in the draft CTG. To assure creditable emissions reductions, before the EPA's final action, the State should document the actual emission reductions that can be expected from the State rule.

Other Coatings

Reductions are projected in this category in the El Paso area but there are no rules or documentation in the plan. Therefore, EPA cannot agree with these projected emission reductions.

Acetone Substitution

These rules are designed to limit emissions from cultured (synthetic) marble and fiber reinforced plastic (FRP) operations in the Dallas/Fort Worth, El Paso, and Houston areas.

These operations typically used large quantities of acetone as a cleaning solvent. These rules limit the use of acetone or require the use of substitute materials with a low vapor pressure.

The EPA added acetone to the list of non-reactive compounds on June 16, 1995 (60 FR 31633). Therefore, the EPA will take no action on these rules. As a result, the EPA cannot agree with the use of these projected emission reductions toward the 15 Percent Rate of Progress Plan.

Stage II in El Paso

In the SIP revision, Texas assumed an in-use efficiency of 88 percent for Stage II in El Paso. In the other three areas, Texas assumed an 81 percent in-use efficiency. The EPA believes that 81 percent in-use efficiency is appropriate based on the number of inspections being performed and the percentage of exempted stations. Therefore, the emission reductions from the higher in-use efficiency were not documented and cannot be credited toward the rate of progress plan for El Paso. The EPA can agree with emission reductions based on an 81 percent in-use efficiency. The EPA cannot agree with the emission reductions resulting from estimates of an in-use efficiency in excess of 81 percent.

Shortfall

Tables 2 through 5 summarize the proposed creditable and noncreditable reductions.

TABLE 2.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: DALLAS/FORT WORTH (TONS/DAY)

Required Reduction	145.93
Creditable Reductions:	
RACT Catch-up	4.19
Stage II	18.19
Aircraft Stage III	0.60
Other VOC storage, transport	0.05
FMVCP Tier I	1.83
Bakeries	0.12
Auto Refinishing	4.51
Municipal Landfills	3.49
Carswell Fire Training Pit Closure	1.20
RE Improvements	4.77
Gas Utility Engines	6.53
Reform:	
On-Road	33.18
Off-Road	3.17
TCM's	6.94
Consumer/Commercial Products	3.45
Gasoline Terminals	2.17
Fugitives	0.07
Wood Furniture	1.35
AIM	6.22
Total	102.03
Noncreditable Reductions:	
AIM	1.09
Inspection & Maintenance	43.79
Acetone Replacement	0.29
Total noncreditable	45.17
Short fall	43.90

TABLE 3.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: EL PASO (TONS/DAY)

Required Reduction	21.38
Creditable Reductions:	
RACT Catch-up	0.71
Stage II	1.87
Aircraft Stage III	0.02
FMVCP Tier I	0.25
Auto Refinishing	1.13
Offset Printing	0.56
Vessel Loading	0.32
Fugitives	1.13
RE Improvements	0.61
Gas Utility Engines	0.84
TCM's	0.30
Architectural Coatings	1.05
Consumer/Commercial Products	0.61
Municipal Landfills	0.21
Industrial Wastewater	0.27
Bulk Gasoline Terminals	0.82
Outdoor Burning	0.40
Wood Furniture	0.04
RVP (on-road)	2.61
RVP (off-road)	0.09
Total	13.84
Noncreditable Reductions:	
AIM	0.37
Inspection & Maintenance	6.72
Stage II	0.16
Other Coatings	0.30
Total Noncreditable	7.55
Short fall	7.54

TABLE 4.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: BEAUMONT/PORT ARTHUR (TONS/DAY)

Required Reduction	47.68
Creditable Reductions:	
RACT Catch-up	18.84
Benzene NESHAP	.28
TSDF	.04
Stage II	1.94
FMVCP Tier I	.22
Vessel Cleaning/Degassing	0.02
Fugitive Controls	15.61
RE Improvements	5.98
Gas Utility Engines	1.05
AIM	0.59
Consumer/Commercial Products	0.33
Total	44.90
Noncreditable Reductions:	
AIM	0.21
Inspection & Maintenance	3.16
Total noncreditable	3.37
Short fall	2.78

TABLE 5.—SUMMARY OF CREDITABLE AND NONCREDITABLE EMISSION REDUCTIONS: HOUSTON/GALVESTON (TONS/DAY)

Required Reduction	232.24
Creditable Reductions:	
RACT Catch-up	27.09
TSDF	.80
Stage II	16.89
VOC Storage, Transportation	0.46
Reform Gas:	
On Road	19.33
Off Road	6.53
FMVCP Tier I	1.49
Auto Refinishing	7.15
Vessel Cleaning/Degassing	2.74
SOCMI Rct. & Dist.	5.55
Fugitive Controls	34.61
RE Improvements	8.56
Gas Utility Engines	9.08
TCMs	.10
Consumer/Commercial Products	3.85
Marine Vessel loading	[1] 13.73
Gasoline Terminals	.81
Wood Coating	.37
Bakeries	.23
AIM	7.31
Industrial Wastewater	[2] 6.20
Total	171.88
Noncreditable Reductions:	
AIM	1.83
Indust. Wastewater	7.16
Inspection & Maintenance	34.49
Marine Vessel Loading	13.64
Acetone Replacement	1.43
Employee Commute Options	1.81
Total Noncreditable	60.36
Short fall	60.36

[1] Texas should demonstrate that emission reductions are not being shown here for sources that emit less than 100 tons/year.

[2] EPA believes these emission reductions may be overstated. Texas should show a control efficiency of 42 percent is appropriate in light of control that is less stringent than the HON. (See the Technical Support Document).

Contingency Measures

Ozone areas classified as moderate or above must include in their submittals, under section 172(c)(9) of the CAA, contingency measures to be implemented if Reasonable Further Progress (RFP) is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I, (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional

planning by the State is needed. Therefore, the EPA interprets the CAA to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in the November 1993 submittal, so that upon implementation of such measures, additional emissions reductions of up to three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review .

Analysis of Specific Contingency Measures

The following is a discussion of each of the contingency measures that have been included in the SIP submittals and an analysis of their acceptableness.

Degassing or Cleaning of Vessels

As discussed previously, this measure was adopted as part of the 15 percent rate of progress plans for the Houston and Beaumont areas. It was also adopted as a contingency rule in the El Paso and Dallas/Fort Worth areas. The EPA believes the reductions that have been projected if this measure is needed as a contingency measure are appropriate. The EPA proposes limited approval of these rules as a strengthening of the SIP.

Dry Cleaning Naphtha

These rules adopted at 30 TAC 115.552 as a contingency measure would call for control of dry cleaners that use petroleum naphtha. This rule was adopted as a contingency measure in the Dallas/Fort Worth, El Paso, and Houston areas. The EPA has evaluated this rule and believes that it will achieve the projected reductions in the event it must be implemented. The EPA proposes to give limited approval to these rules as a strengthening of the SIP.

Offset Printing

As discussed previously, regulation of emissions from offset printing was adopted as a 15 percent measure in the El Paso area. It was also adopted as a contingency measure in the Houston and Dallas/Fort Worth areas. The EPA believes that the emission reductions that have been projected if it is necessary to implement these rules are appropriate. The EPA proposes limited approval of these rules as a strengthening of the SIP.

Commercial Bakeries

As discussed previously, Texas adopted control measures for major source bakeries in Dallas/Fort Worth and Houston. Texas also adopted for Dallas, Houston and El Paso, a contingency measure for minor source bakeries to be controlled in the event a milestone demonstration or attainment date is missed. The EPA believes the reductions that are projected if these rules are implemented are appropriate. The EPA is proposing limited approval of these rules as a strengthening of the SIP.

Transportation Control Measures

In Dallas/Fort Worth and El Paso, Texas has projected that additional emission reductions will come from transportation control measures that will be implemented in the 1997 time frame. These additional reductions serve as a contingency measure if these areas miss a milestone or fail to attain the standard. The EPA is proposing limited approval of these Transportation Control Measures as a strengthening of the SIP.

Gas Utility Engines

Texas has relied on emission reductions from the State small utility engine rule toward the contingency plan from new, cleaner, engines placed in service during 1997. As discussed previously, the State rule has been revised to have a later compliance date. While the EPA believes that the data provided by the small engine manufacturers provides the needed reductions during 1994, 1995 and 1996; it is unclear whether the necessary reductions will occur during 1997 to be creditable in the contingency plans. Again, the EPA is taking no action on the State Small utility engine rule. Texas, in future submittals, will have to revise its emission reduction estimates to be consistent with the data provided by the small engine manufacturers and subsequent EPA policy.

Automobile Refinishing

As discussed previously, regulations on emissions from automobile refinishing were adopted in Dallas/Fort Worth, El Paso and Houston. These same rules were adopted as contingency measures in the Beaumont/Port Arthur area. The EPA believes that the projected emission reductions will occur if it is necessary to implement this rule. Therefore, the EPA is proposing limited approval of this rule as a strengthening of the SIP in the Beaumont area.

Vehicle Inspection and Maintenance

All of the contingency plans relied to some extent on reductions from the previously planned vehicle inspection and maintenance program. As discussed previously, these reductions cannot be expected to occur. In addition, the State has combined the projected emission reductions from Tier I FMVCP with the projected I/M reductions. The EPA cannot determine what portion of the combined reductions are attributable to the Tier I program. Therefore, the EPA cannot agree with the projected reductions from the Tier I program.

Pesticide Application

The contingency plan for El Paso includes reductions from the control of emissions during pesticide application. The plan does not include any supporting documentation for these reductions or rules for the control of emissions from pesticide application. Therefore, the EPA cannot agree with these reductions toward the contingency plan.

Tables 6 through 9 summarize the reductions that the EPA agrees with and disagrees with in each of the contingency plans. Because Texas has submitted measures for each of the four nonattainment areas that will result in reductions in emissions if implemented, the EPA is proposing a limited approval of the four contingency plans because, overall, they would strengthen the SIP. However, none of the contingency plans will result in the required three percent reduction. Therefore, the EPA is also proposing a limited disapproval of the contingency plans. The EPA is proposing limited approval of the control measures in the contingency plans because they strengthen the SIP. The control measures cannot be completely approved because they do not meet all of the underlying Clean Air Act requirements.

TABLE 6: SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: DALLAS/FORT WORTH (TONS/DAY)

Required Contingency	16.28
Creditable Contingency Reductions:	
Vessel Cleaning	0.20
Dry Cleaning Naphtha	1.96
Offset Printing	0.85
Commercial Bakeries	0.15
TCMs	2.03
Gas Utility Engines	[1]6.65
Total	11.84
Noncreditable Contingency Reductions:	
I/M Improvements	3.83
I/M and Tier I FMVCP	6.65

TABLE 6: SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: DALLAS/ FORT WORTH (TONS/DAY)—Continued

Total noncreditable	10.48
Short fall	4.44

[1] These reductions will need to be reevaluated in light of the emisssion reductions information provided by the small engine manufacturers.

TABLE 7.—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: EL PASO (TONS/DAY)

Required Contingency	2.22
Creditable Contingency Reductions:	
Vessel Cleaning	0.09
Dry Cleaning Naphtha	0.28
Commercial Bakeries	0.05
TCMs	0.53
Gas Utility Engines 1997	[1] 0.79
Total	1.74
Noncreditable Contingency Reductions:	
I/M & Tier I FMVCP	0.63
Pesticides	0.08
Total Noncreditable	0.71
Short fall	0.48

[1] These reductions will need to be reevaluated in light of the emisssion reductions information provided by the small engine manufacturers.

TABLE 8.—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: BEAUMONT/ PORT ARTHUR (TONS/DAY)

Required Contingency	9.93
Creditable Contingency Reductions:	
Gas Utility Engines	[1] 1.05
Auto Refinishing	0.68
Total	1.73
Noncreditable Contingency Reductions:	
I/M & Tier I FMVCP	0.66
Total Noncreditable	0.66
Short fall	8.20

[1] These reductions will need to be reevaluated in light of the emission reductions information provided by the small engine manufacturers.

TABLE 9—SUMMARY OF CREDITABLE AND NONCREDITABLE CONTINGENCY MEASURE REDUCTIONS: HOUSTON/ GALVESTON (TONS/DAY)

Required Contingency	32.73
Creditable Contingency Reductions:	
Municipal Landfills	3.99
Dry Cleaning-Naphtha	1.77
Offset Printing	2.21
Utility Engines 1997	.....
	9.20[1]
Total	17.17
Noncreditable Contingency Reductions:	
I/M & Tier I	7.80
Total Noncreditable	7.80
Short fall	15.56

[1] These reductions will need to be reevaluated in light of the emisssion reductions information provided by the small engine manufacturers.

Alternate Means of Control

The EPA is approving Texas' AMOC rule contained in 115.901, 910, 911–918 as a strengthening of the SIP.

This rule establishes procedures for a facility to request use of an AMOC plan in lieu of complying with control requirements of Chapter 115, relating to the control of air pollution from volatile organic compounds. The rule provides flexibility for a facility to identify alternative emission reductions. The intent is to allow the regulated community flexibility to control air pollution through less costly control strategies while achieving environmental standards.

The rule contains the nine program elements required by the EPA's Economic Incentive Program (EIP) rules (59 FR 16690–16717). The program elements are a Statement of Purpose, Scope, Baseline, Quantification, Source Requirements, Uncertainty/ Reconciliation, Implementation, Administrative System, and Enforcement. The EPA is proposing limited approval of the rule under the two-step process described in the EPA rule (59 FR 16694), which permits a State to submit a rule containing the general framework for the elements and a specific trade which provides the regulatory details for similar trades. Texas submitted the rule to the EPA Region 6 on August 3, 1994. A proposed AMOC plan from Du Pont was submitted to the EPA in a letter dated September 19, 1995. The EPA believes that this trade meets the requirements of the AMOC rule and the EIP rule. Having received the general framework and a specific trade providing the regulatory details, the EPA proposes limited approval of the AMOC provision as strengthening of the SIP.

Proposed Action

The EPA has evaluated these submittals for consistency with the Act, EPA regulations, and EPA policy. The 15 Percent Plans in these SIP submittals will not achieve enough reductions to meet the 15 percent rate of progress requirements of section 182(b)(1) of the CAA. In addition, the contingency plans in these SIP submittals will not achieve enough emission reductions, if implemented, to meet the three percent reduction requirement under 172(c)(9) of the CAA. In light of this shortfall, the EPA cannot grant full approval of these plan revisions under Section 110(k)(3) and Part D. However, the EPA may grant a limited approval of the submitted plans under Section 110(k)(3) and section 301(a) since the 15 Percent Plans and the Contingency Plans will result in a certain percentage of VOC emission reductions. Thus, the EPA is proposing a limited approval of Texas' 15 Percent Plans and Contingency Plans under sections 110(k)(3) and 301(a) of the CAA. The EPA is also proposing a limited disapproval of the Texas submittals under sections 110(k)(3) and 301(a) because the submittals do not fully meet the requirements of section 182(b)(1) of the CAA for the 15 Percent Rate of Progress Plans, and the plans do not achieve the required emission reductions. In addition, the plans do not meet the requirement of section 172(c)(9) for contingency measures because the plans will not achieve the required 3 percent emission reductions, if implemented.

The EPA is aware that Texas has undertaken extensive efforts to improve the accuracy of the 1990 base year emission inventory and the accuracy of the emission projections being made for 1996. In addition, the State has expressed its intention to submit a revised vehicle I/M program during the 120 day time frame required by the recently adopted National Highway System Designation Act of 1995. The improved emission inventory and additional reductions from vehicle I/M may serve to correct the shortfall identified in this proposed Federal Register Action. To gain full approval, Texas will need to submit revised plans that document changes to the emissions inventory and the necessary enforceable reductions, such as those resulting from

a revised I/M program, to meet the 15 percent rate of progress requirements and include sufficient contingency measures to achieve a 3 percent reduction.

The EPA believes that approval of the control measures in these plans will strengthen the SIP. Therefore, the EPA is proposing limited approval of the control measures in the 15 Percent Plans and Contingency Plans. The EPA is not addressing whether these control measures, being approved as a strengthening of the SIP, meet any other underlying requirements of the Act such as the requirement for VOC RACT under 182(b)(2). The EPA will address these requirements in separate Federal Register notices.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and the imposition of emission offset requirements. The 18-month period referred to in section 179(a) will begin on the effective date established in the final limited disapproval action. If the deficiency is not corrected within 6 months of the imposition of the first sanction, the second sanction will apply. This sanctions process is set forth at 59 FR 39832 (Aug. 4, 1994), to be codified at 40 CFR 52.31. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Also, 40 CFR 51.448(b) of the Federal transportation conformity rules (40 CFR 51.448(b)) state that if the EPA disapproves a submitted control strategy implementation plan revision which initiates the sanction process under CAA section 179, the conformity status of the transportation plan and transportation improvement plan shall lapse 120 days after the EPA's limited disapproval.

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

Regulatory Process

The Office of Management and Budget has exempted this action from review under Executive Order l2866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

The EPA's proposed limited disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this proposed limited disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this proposed limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

Unfunded Mandates

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

Through submission of these SIP revisions which have been proposed for limited approval in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the CAA. The rules and commitments given limited approval in this action may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being given limited approval by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector; the EPA's action will impose no new requirements. Such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, the EPA has determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: December 12, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 96–1543 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52 And 81

[OH79–2–7115; FRL–5406–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Denial of comment period extension on proposed rule.

SUMMARY: This action denies a request to extend the comment period on the proposed rule approving the Cleveland/Akron/Lorain (CAL) ozone nonattainment area redesignation to

attainment request and maintenance plan.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6082.

SUPPLEMENTARY INFORMATION: On June 15, 1995, the USEPA published a proposed rule (60 FR 31433) to approve a redesignation to attainment request and maintenance plan submitted by the State of Ohio for the CAL ozone nonattainment area, consisting of the Counties of Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit, and Portage. The maintenance plan is designed to help the area meet the ozone air quality standard for the next ten years. The comment period closed on July 17, 1995. On July 19, 1995, the USEPA received a phone message requesting that the public comment period on the proposed rulemaking be extended until 30 to 60 days after Ohio releases the results of its 1994 air toxics monitoring study in order to have adequate time to review the 1994 air toxics monitoring data relating to the city of Cleveland before submitting comments in full. The Ohio study is an intermittent year round monitoring program occurring in certain Ohio cities, such as Cleveland, which samples ambient air concentrations of certain air toxics at monitoring locations in those cities for twenty-four hours every six days. In general, some air toxics compounds are also classified as volatile organic compounds (VOC), which contribute to ground-level ozone formation. The requestor wanted to use the air toxics monitoring data gathered in the city of Cleveland in 1994 relating to VOCs and compare it with VOC emission inventory data used by Ohio to justify the CAL area redesignation request. Results of the Ohio air toxics study has been published from the beginning of the program in 1989 to 1993, and at the time the extension request was made the 1994 study had been completed but not yet published.

To fulfill one of the Clean Air Act's criteria for redesignating ozone nonattainment areas under section 107(d)(3)(E), the State of Ohio included ozone precursor emissions inventory data to demonstrate that levels of VOCs in the CAL area decreased from 1990 to 1993 due to enforceable emissions reductions resulting from the implementation of two federal programs; lower fuel volatility and the Federal Motor Vehicle Control Program. During that period ozone air pollution levels also decreased in the CAL area as demonstrated by ozone ambient air monitoring data. This data demonstrated that the area met the ozone National Ambient Air Quality Standards (NAAQS) during 1992 through 1994. Preliminary ozone monitoring data for the 1995 ozone season demonstrate that the CAL area continues to maintain compliance with the ambient air quality standards for ozone.

There is no justification to reopen the comment period to allow time to review the 1994 Ohio air toxics study because the study was neither designed nor intended to collect data which could identify the aggregate ozone precursor emissions of VOC from every source in the CAL area for a typical summer day or determine whether these emissions have in fact risen or declined over time. The emission inventory data, submitted in the CAL area redesignation request, on the other hand, serves both these functions. As discussed in the June 15, 1995, Federal Register, the State's data supporting the CAL area redesignation request fully comports with requirements under the Clean Air Act and was appropriately compiled in accordance with USEPA guidance (*See* 60 FR at 31433). For the reasons discussed above, the request to extend the comment period on the proposed rulemaking has been denied.

Dated: December 15, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–1558 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–5405–3]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed in Supplementary Information.

DATES: Comments on the proposed update must be received on or before February 28, 1996.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section IX). This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section IX, Environmental Protection Agency, 401 M Street SW., Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (FR 63774), and the preamble to the final rule promulgated September 4, 1992 (FR 40792) for further background and information on the OCS regulations.

pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This notice of proposed rulemaking is being promulgated in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rulemaking.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules [2], and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by Santa Barbara County APCD against the criteria set forth above in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA.

The following rules were submitted as revisions to existing requirements:

Rule 323—Architectural Coatings (Adopted 3/16/95)
Rule 330—Surface Coating of Metal Parts and Products (Adopted 4/21/95)

The following rule was submitted to be added as a new requirement:

Rule 344—Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)

B. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

The following rules were submitted as revisions to existing requirements:

Rule 1107—Coating of Metal Parts and Products (Adopted 5/12/95)
Rule 1121—Control of Nitrogen Oxides from Residential-Type, Natural-Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 2002—Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_X) Emissions (Adopted 3/10/95)
Appendix A—Protocol for Rule 2012—Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 3/10/95)
Appendix A—Protocol for Rule 2015—Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_x) Emissions (Adopted 3/10/95)
XXXI—Acid Rain Permit Program (Adopted 2/10/95)

The following rule was submitted to be added as a new requirement:

Rule 1171—Solvent Cleaning Operations (Adopted 5/12/95)

The following rule was submitted but will not be included:

Rule 1115—Motor Vehicle Assembly Line Coating Operations (Adopted 5/12/95)

C. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA.

The following rules were submitted as revisions to existing requirements:

Rule 10—Permits Required (Adopted 6/13/95)
Rule 42—Permit Fees (Adopted 7/11/95)
Rule 74.15.1—Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)

The following rules were revised with a Title Change:

Rule 11—Definition for Regulation II (Adopted 6/13/95) (Old Rule 11 name—Application Contents)
Rule 12—Application for Permits (Adopted 6/13/95) (Old Rule 12 name—Statement by Application Preparer)
Rule 13— Action on Applications for an Authority to Construct (Adopted 6/13/95) (Old Rule 13 name—Statement by Applicant)
Rule 14—Action on Applications for a Permit to Operate (Adopted 6/13/95) (Old Rule 14 name—Trial Test Runs)
Rule 16—BACT Certification (Adopted 6/13/95) (Old Rule 16 name—Permit Contents)

The following rule was submitted to be added as a new requirement:

Rule 220—General Conformity (Adopted 5/9/95)

The following rule was submitted but will not be included:

Rule 221—Transportation Conformity (Adopted 9/12/95)
Rule 15—Standards for Permit Issuance (Adopted 6/13/95)

The following rules have been removed:

Appendix II–A Information Required for Applications to the Air Pollution Control District
Rule 18—Permit to Operate Application
Rule 21—Expiration of Applications and Permits

Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the

[2] After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a ''significant impact on a substantial number of small entities.'' Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: January 16, 1996.

Felicia Marcus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii) (F), (G), and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II).

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraphs (b) (6), (7), and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102—Definitions (Adopted 7/30/91)
Rule 103—Severability (Adopted 10/23/78)
Rule 201—Permits Required (Adopted 7/2/79)
Rule 202—Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203—Transfer (Adopted 10/23/78)
Rule 204—Applications (Adopted 10/23/78)
Rule 205—Standards for Granting Applications (Adopted 7/30/91)
Rule 206—Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207—Denial of Application (Adopted 10/23/78)
Rule 210—Fees (Adopted 5/7/91)
Rule 212—Emission Statements (Adopted 10/20/92)
Rule 301—Circumvention (Adopted 10/23/78)
Rule 302—Visible Emissions (Adopted 10/23/78)
Rule 304—Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305—Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306—Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307—Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308—Incinerator Burning (Adopted 10/23/78)
Rule 309—Specific Contaminants (Adopted 10/23/78)
Rule 310—Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311—Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312—Open Fires (Adopted 10/2/90)
Rule 316—Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317—Organic Solvents (Adopted 10/23/78)
Rule 318—Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321—Control of Degreasing Operations (Adopted 7/10/90)
Rule 322—Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323—Architectural Coatings (Adopted 3/16/95)
Rule 324—Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325—Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326—Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327—Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328—Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330—Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331—Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332—Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333—Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342—Control of Oxides of Nitrogen (NO_X from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 343—Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344—Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 359—Flares and Thermal Oxidizers (6/28/94)
Rule 505—Breakdown Conditions Sections A.,B.1, and D. only (Adopted 10/23/78)
Rule 603—Emergency Episode Plans (Adopted 6/15/81)
Rule 702—General Conformity (Adopted 10/20//94)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources:*

Rule 102—Definition of Terms (Adopted 11/4/88)
Rule 103—Definition of Geographical Areas (Adopted 1/9/76)
Rule 104—Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108—Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109—Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201—Permit to Construct (Adopted 1/5/90)
Rule 201.1—Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202—Temporary Permit to Operate (Adopted 5/7/76)
Rule 203—Permit to Operate (Adopted 1/5/90)
Rule 204—Permit Conditions (Adopted 3/6/92)
Rule 205—Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206—Posting of Permit to Operate (Adopted 1/5/90)

Rule 207—Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208—Permit for Open Burning (Adopted 1/5/90)
Rule 209—Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210—Applications (Adopted 1/5/90)
Rule 212—Standards for Approving Permits (8/12/94) except (c)(3) and (e)
Rule 214—Denial of Permits (Adopted 1/5/90)
Rule 217—Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218—Stack Monitoring (Adopted 8/7/81)
Rule 219—Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
Rule 220—Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221—Plans (Adopted 1/4/85)
Rule 301—Permit Fees (Adopted 6/10/94) except (e)(3) and Table IV
Rule 304—Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)
Rule 304.1—Analyses Fees (Adopted 6/10/94)
Rule 305—Fees for Acid Deposition (Adopted 10/4/91)
Rule 306—Plan Fees (Adopted 6/10/94)
Rule 309—Fees for Regulation XVI (Adopted 6/10/94)
Rule 401—Visible Emissions (Adopted 4/7/89)
Rule 403—Fugitive Dust (Adopted 7/9/93)
Rule 404—Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405—Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407—Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408—Circumvention (Adopted 5/7/76)
Rule 409—Combustion Contaminants (Adopted 8/7/81)
Rule 429—Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430—Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1—Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2—Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3—Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441—Research Operations (Adopted 5/7/76)
Rule 442—Usage of Solvents (Adopted 3/5/82)
Rule 444—Open Fires (Adopted 10/2/87)
Rule 463—Storage of Organic Liquids (Adopted 3/11/94)
Rule 465—Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468—Sulfur Recovery Units (Adopted 10/8/76)
Rule 473—Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474—Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475—Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476—Steam Generating Equipment (Adopted 10/8/76)
Rule 480—Natural Gas Fired Control Devices (Adopted 10/7/77)

Addendum to Regulation IV (Effective 1977)

Rule 701—General (Adopted 7/9/82)
Rule 702—Definitions (Adopted 7/11/80)
Rule 704—Episode Declaration (Adopted 7/9/82)
Rule 707—Radio—Communication System (Adopted 7/11/80)
Rule 708—Plans (Adopted 7/9/82)
Rule 708.1—Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2—Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4—Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709—First Stage Episode Actions (Adopted 7/11/80)
Rule 710—Second Stage Episode Actions (Adopted 7/11/80)
Rule 711—Third Stage Episode Actions (Adopted 7/11/80)
Rule 712—Sulfate Episode Actions (Adopted 7/11/80)
Rule 715—Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)

Regulation IX—New Source Performance Standards (Adopted 4/8/94)

Rule 1106—Marine Coatings Operations (Adopted 1/13/95)
Rule 1107—Coating of Metal Parts and Products (Adopted 5/12/95)
Rule 1109—Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110—Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1—Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2—Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113—Architectural Coatings (Adopted 9/6/91)
Rule 1116.1—Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121—Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122—Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123—Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129—Aerosol Coatings (Adopted 11/2/90)
Rule 1134—Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1136—Wood Products Coatings (Adopted 8/12/94)
Rule 1140—Abrasive Blasting (Adopted 8/2/85)
Rule 1142—Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146—Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1—Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148—Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149—Storage Tank Degassing (Adopted 4/1/88)
Rule 1168—Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
Rule 1171—Solvent Cleaning Operations (Adopted 5/12/95)
Rule 1173—Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176—Sumps and Wastewater Separators (Adopted 5/13/94)
Rule 1301—General (Adopted 6/28/90)
Rule 1302—Definitions (Adopted 5/3/91)
Rule 1303—Requirements (Adopted 5/3/91)
Rule 1304—Exemptions (Adopted 9/11/92)
Rule 1306—Emission Calculations (Adopted 5/3/91)
Rule 1313—Permits to Operate (Adopted 6/28/90)
Rule 1403—Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1610—Old-Vehicle Scrapping (Adopted 1/14/94)
Rule 1701—General (Adopted 1/6/89)
Rule 1702—Definitions (Adopted 1/6/89)
Rule 1703—PSD Analysis (Adopted 10/7/88)
Rule 1704—Exemptions (Adopted 1/6/89)
Rule 1706—Emission Calculations (Adopted 1/6/89)
Rule 1713—Source Obligation (Adopted 10/7/88)

Regulation XVII Appendix (effective 1977)

Rule 1901—General Conformity (Adopted 9/9/94)
Rule 2000—General (Adopted 10/15/93)
Rule 2001—Applicability (Adopted 10/15/93)
Rule 2002—Allocations for oxides of nitrogen (NO_x) and oxides of sulfur (SO_x) (Adopted 3/10/95)
Rule 2004—Requirements (Adopted 10/15/93) except (l) (2 and 3)
Rule 2005—New Source Review for RECLAIM (Adopted 10/15/93) except (i)
Rule 2006—Permits (Adopted 10/15/93)
Rule 2007—Trading Requirements (Adopted 10/15/93)
Rule 2008—Mobiles Source Credits (Adopted 10/15/93)
Rule 2010—Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 10/15/93)

Appendix A—Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)

Rule 2012— Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NOx) Emissions (Adopted 10/15/93)

Appendix A—Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)

Rule 2015—Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)
XXXI—Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2—Definitions (Adopted 12/15/92)
Rule 5—Effective Date (Adopted 5/23/72)

Rule 6—Severability (Adopted 11/21/78)
Rule 7—Zone Boundaries (Adopted 6/14/77)
Rule 10—Permits Required (Adopted 6/13/95)
Rule 11—Definition for Regulation II (Adopted 6/13/95)
Rule 12—Application for Permits (Adopted 6/13/95)
Rule 13—Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14—Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1—Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16—BACT Certification (Adopted 6/13/95)
Rule 19—Posting of Permits (Adopted 5/23/72)
Rule 20—Transfer of Permit (Adopted 5/23/72)
Rule 23—Exemptions from Permits (Adopted 12/13/94)
Rule 24—Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26—New Source Review (Adopted 10/22/91)
Rule 26.1—New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2—New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3—New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6—New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8—New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10—New Source Review—PSD (Adopted 10/22/91)
Rule 28—Revocation of Permits (Adopted 7/18/72)
Rule 29—Conditions on Permits (Adopted 10/22/91)
Rule 30—Permit Renewal (Adopted 5/30/89)
Rule 32—Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 34—Acid Deposition Control (Adopted 3/14/95)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42—Permit Fees (Adopted 7/11/95)
Rule 44—Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45—Plan Fees (Adopted 6/19/90)
Rule 45.2—Asbestos Removal Fees (Adopted 8/4/92)
Rule 50—Opacity (Adopted 2/20/79)
Rule 52—Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53—Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54—Sulfur Compounds (Adopted 6/14/94)
Rule 56—Open Fires (Adopted 3/29/94)
Rule 57—Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60—New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7—Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63—Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64—Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66—Organic Solvents (Adopted 11/24/87)
Rule 67—Vacuum Producing Devices (Adopted 7/5/83)
Rule 68—Carbon Monoxide (Adopted 6/14/77)
Rule 71—Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1—Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2—Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3—Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4—Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5—Glycol Dehydrators (Adopted 12/13/94)
Rule 72—New Source Performance Standards (NSPS) (Adopted 6/28/94)
Rule 74—Specific Source Standards (Adopted 7/6/76)
Rule 74.1—Abrasive Blasting (Adopted 11/12/91)
Rule 74.2—Architectural Coatings (Adopted 08/11/92)
Rule 74.6—Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1—Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2—Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7—Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8—Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9—Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10—Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11—Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)
Rule 74.12—Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15—Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1—Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16—Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20—Adhesives and Sealants (Adopted 6/8/93)
Rule 74.23—Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24—Marine Coating Operations (Adopted 3/8/94)
Rule 74.26—Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27—Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28—Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30—Wood Products Coatings (Adopted 5/17/94)
Rule 75—Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100—Analytical Methods (Adopted 7/18/72)
Rule 101—Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102—Source Tests (Adopted 11/21/78)
Rule 103—Stack Monitoring (Adopted 6/4/91)
Rule 154—Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155—Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156—Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158—Source Abatement Plans (Adopted 9/17/91)
Rule 159—Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220—General Conformity (Adopted 5/9/95)

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[FR Doc. 96–1546 Filed 1–26–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5408–2]

National Emissions Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The Office of Radiation and Indoor Air, Radiation Protection Division will be holding a public hearing for the notice to reopen the comment period for the proposed rule to rescind 40 CFR 61, subpart I for Nuclear Regulatory Commission (NRC) and Agreement State licensees other than nuclear power reactors; and will also be extending the comment period on that notice for Subpart I.

Due to the government shutdown last month and the unusual circumstances of the extended furlough, EPA's January 9th public hearing has been rescheduled. We are also extending the comment period from January 20th to allow the public additional time to review NRC's proposed constraint level rule which was published in the Federal Register on December 13, 1995.

Due to the uncertainty created by the lack of appropriated funds and the Agency's operating under Continuing Resolutions, we are requesting those who plan to attend and participate in the public hearing on February 29th to contact Eleanor Thornton at (202) 233-9773 or Gale Bonanno at (202) 233–9219 so they can be advised of any necessary schedule changes which might occur.

DATES: The hearing will be held on Thursday, February 29, 1996, from 9:00 am to 5:00 pm. The extension for the comment period will allow comments to be received by EPA on or before February 22, 1996.

In addition, pursuant to Section 307(d)(5), the public may submit rebuttal and supplemental information for thirty (30) days after the public hearing. This comment period will end on March 29, 1996.

ADDRESSES: The hearing will take place at the Marriott Hotel, 1999 Jefferson Davis Highway, in Arlington, Virginia (accessed from the Crystal City Metro stop). Comments should be submitted (in duplicate if possible) to: Central Docket Section, Environmental Protection Agency, Attn: Air Docket No. A–92–50, Washington, DC 20460. Docket A–92–50 contains the rulemaking record. The docket is available for public inspection between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC, 20460. A reasonable fee may be charged for copying. The fax number is (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton, Center for Federal Guidance and Air Standards, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, Washington, DC 20460, (202) 233–9773.

SUPPLEMENTARY INFORMATION: This meeting is open to any member of the public. As noted in the notice reopening the comment period (60 FR 50161, No. 188, September 28, 1995), requests to participate in the public hearing should be made in writing to the Director, Lawrence G. Weinstock, Radiation Protection Division, Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, by February 15, 1996. Requests may also be faxed to EPA at (202) 233–9629 or 233–9626. Requests to participate in the public hearing should also include an outline of the topics to be addressed, the amount of time requested, and the names of the participants. EPA may also allow testimony to be given at the hearing without prior notice, subject to time restraints and at the discretion of the hearing officer. Three (3) copies of testimony should be submitted at the time of appearance at the hearings.

Dated: January 23, 1996.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 96–1557 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 131

[WH–FRL–5408–3]

Water Quality Standards for Surface Waters in Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comments.

SUMMARY: EPA is proposing water quality standards that would be applicable to waters of the United States in the State of Arizona. The proposed standards address those six aspects of Arizona's water quality standards that EPA, Region 9 disapproved in 1993 and 1994. EPA is taking this action at this time pursuant to a court order to propose such standards by January 31, 1996. The proposed standards would establish standards for waters that are exempt from State-adopted standards due to a State rule related to mining, designate fish consumption as a use for certain waters, and make certain provisions in the State's standards related to ''practical quantitation limits'' inapplicable for Clean Water Act purposes. In addition, this notice proposes requirements related to implementation of certain narrative criteria in the State's standards, and solicits comment on the policies that EPA, Region 9, intends to use to implement these criteria as they relate to nutrients, chronic toxicity, and the effects of mercury on wildlife.

DATES: EPA will hold a public hearing on its proposed actions on February 29, 1996, in Phoenix, AZ. EPA will consider written comments on the proposed actions received by February 28, 1996, or March 8, 1996.

ADDRESSES: Comments should be addressed to Catherine Kuhlman, Chief, Permits and Compliance Branch, W–5, Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. The public hearing will be held February 29, 1996, from 2 p.m. to 4 p.m. at the Arizona Department of Environmental Quality (ADEQ) Public Meeting Room, South Mall, ADEQ, 3033 North Central Ave., Phoenix, AZ 85012. This action's administrative record is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. For access to the docket materials, call (415) 744–1978 for an appointment. In the event of a government shutdown, also call (415) 744–1978 for information. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Gary Wolinsky, Permits and Compliance Branch, W–5, Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, telephone: 415–744–1978.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), states are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that a water quality standard shall include a designated use or uses to be made of the water and criteria necessary to protect the uses. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA is to approve or disapprove any new or revised standards. Id.

States may include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. 40 CFR 131.6(f), 40 CFR 131.13.

Section 303(c)(4) (33 U.S.C. 1313(c)(4)) of the CWA authorizes EPA to promulgate water quality standards that supersede disapproved State water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed to meet the CWA's requirements.

In September 1993, EPA, Region 9, disapproved portions of Arizona's standards pursuant to section 303(c) of the CWA and 40 CFR 131.21. The portions of Arizona's standards disapproved in September 1993 relate to: The exclusion of mining-related impoundments from water quality standards; the absence of ''fish consumption'' as a designated use for certain water bodies; the absence of implementation procedures for the State's narrative nutrient standard; the absence of biomonitoring implementation procedures for the State's narrative toxicity criterion; and the inclusion of ''practical quantitation limits'' in Arizona's standards. In April

1994, EPA, Region 9, also disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

Arizona is addressing the disapproved elements during the course of its current triennial review of its standards. The Arizona Department of Environmental Quality (ADEQ) has held public meetings and received public comment and, on December 29, 1995, published proposed revisions to its standards. See, 1 Ariz. Admin. Reg. 2811. ADEQ has indicated that it intends as part of its current rulemaking to revise the provision exempting mining impoundments. ADEQ has also indicated that it intends to revise its standards to add the fish consumption use to waters which Arizona has already designated as having the aquatic and wildlife (cold water fishery) or aquatic and wildlife (warm water fishery) uses. ADEQ has also indicated that it intends to delete its list of practical quantitation limits (PQLs) from its water quality standards regulations. Under ADEQ's anticipated timetable, revised water quality standards pursuant to the current triennial review will become effective no later than October 1996.

In addition, ADEQ completed a ''use attainability analysis'' (UAA) related to the fish consumption use for effluent dominated waters, and a UAA related to fish consumption and full body contact uses for ephemeral waters in the State. EPA, Region 9, approved those UAAs in November 1995.

ADEQ is participating, with EPA, Region 9, and the U.S. Fish and Wildlife Service, in the development of an interim approach to protect predatory wildlife from mercury until appropriate numeric criteria can be developed. Moreover, ADEQ intends to complete implementation procedures for the State's narrative toxic and nutrient criteria. ADEQ is developing its guidance document pertaining to the narrative nutrient standard. ADEQ has also committed to develop implementation procedures for its narrative toxic criterion. ADEQ expects to submit the final guidance document pertaining to its narrative criterion to EPA no later than December 1996.

Although Arizona has made progress in revising its standards, it has not yet completed its process for revising the portions of the State's standards to address EPA, Region 9's disapprovals in September 1993 and April 1994.

On November 1, 1995, the United States District Court for the District of Arizona ordered EPA, within 90 days, to prepare and publish proposed regulations setting forth revised or new water quality standards for those standards disapproved in September 1993 and April 1994. *Defenders of Wildlife* v. *Browner,* Docket No. Civ 93–234 TUC ACM. Consistent with the Court's order, this Federal Register notice proposes standards related to the mining exclusion, fish consumption designated use, PQLs, and implementation policies and procedures as they relate to the disapproval. This notice also describes policies that EPA, Region 9, intends to use in order to implement State narrative criteria as they relate to toxicity, nutrients, and mercury. The Court's order also directs EPA to promulgate final water quality standards 90 days after proposal unless Arizona has adopted revised or new water quality standards which EPA determines are in accordance with the CWA.

Finally, it should be noted that EPA's longstanding practice in the water quality standards program is to remove any final federal rule after the State adopts appropriate rules which meet the CWA requirements and are approved by EPA. Thus, EPA strongly encourages the State to adopt appropriate standards so that EPA can remove any final rule adopted subsequent to this proposal.

B. Proposed Standards

1. Mining Exclusion

In September 1993, EPA, Region 9, disapproved the exclusion related to mining contained in the State's standards at Arizona Administrative Rules and Regulations, R18–11–103.2. That exclusion provides that Arizona's standards do not apply to:

> ''Man-made surface impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores, including pregnant leach solution ponds, raffinate ponds, tailing impoundments, decant ponds, concentrate or tailing thickeners, blowdown water ponds, ponds and sumps in mine pits associated with dewatering activity, ponds holding water that has come into contact with process or product and that is being held for recycling, spill or upset catchment ponds or ponds used for on-site remediation provided that any discharge from any such surface impoundment to a navigable water is permitted under the National Pollutant Discharge Elimination System program.''

In its December 1995 notice, ADEQ proposed to delete R18–11–103 in its entirety, and proposed to revise R18–11–102 to provide that Arizona's standards do not apply to:

> ''Man-made surface impoundments and associated ditches and conveyances used in the extraction, beneficiation and processing of metallic ores, including pits, pregnant leach solution ponds, raffinate ponds, tailing impoundments, decant ponds, concentrate or tailing thickeners, blowdown water ponds, ponds and sumps in mine pits associated with dewatering activity, ponds holding water that has come in contact with process or product and that is being held for recycling, spill or upset catchment ponds, or ponds used for on-site remediation that are located on either lands that were not and are not surface waters or that are located on fast lands.''

Under the rules proposed by ADEQ in December 1995, the term ''fast lands'' means

> ''land that was once a surface water but no longer remains a surface water because it has been and remains legally converted to land by the discharge of dredged or fill material that: (1) Was authorized by a section 404 permit; (2) exempt from section 404 permit requirements; or (3) occurred before there was a section 404 permit requirement for the discharge of the dredged or fill material.''

See, proposed R18–11–101.24.

Under section 303 of the CWA, States must adopt standards for waters of the United States within the State. States need not adopt standards for any water body which is not a water of the United States. EPA has defined waters of the United States to include, among other waters, rivers and streams the use, degradation, or destruction of which would affect or could affect interstate commerce; impoundments of such waters are also waters of the United States. See, 40 CFR 122.2.

While many of the mining impoundments which Arizona apparently intended to exclude from standards by R18–11–103.2 may not be waters of the United States, the rule's blanket exemption does not distinguish among water bodies based upon their status as waters of the United States, and therefore has the potential to exclude from standards a water body that is a water of the United States. For example, mining-related impoundments made by damming a natural stream or river would appear to be exempt from Arizona's standards under R18–11–103.2 if any discharge from the impoundment is permitted under section 402 of the CWA or if the stream or river is fully dammed so that any release to a water of the United States is prevented.

In order to ensure that the standards governing waters of the United States in Arizona are consistent with the CWA, EPA is proposing to adopt standards for any waters of the United States not governed by State standards due to R18–11–103.2. Under the rule proposed by EPA, if a water of the United States governed by R18–11–103.2 is an impoundment of a water of the United States, it would have the standards of the water body impounded. If a water of the United States governed by R18–11–

103.2 is not such an impoundment, under the proposed rule it will have the standards of the waterbody to which it is a tributary. Under the proposed rule, only those water bodies which are waters of the United States will be governed by such standards. Water bodies described in R18–11–103.2 which are not waters of the United States are, of course, not subject to water quality standards under the CWA, including the standards that would be adopted in this rulemaking.

EPA is seeking comment on the Federal rule proposed in this notice. In particular, EPA is seeking comment identifying any cases in which a commenter believes that a water of the United States would have an inappropriate water quality standard if the proposed Federal rule is adopted. EPA is also seeking comment on the exclusion which Arizona has proposed in its December 29, 1995, notice.

2. ''Fish Consumption'' Use

Arizona has designated several uses for its waters, including uses defined as ''fish consumption,'' ''aquatic and wildlife (cold water fishery),'' ''aquatic and wildlife (effluent dominated water),'' ''aquatic and wildlife (ephemeral),'' and ''aquatic and wildlife (warm water fishery)''. See, R–18–11–101, and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations.

In September 1993, EPA disapproved the lack of the ''fish consumption'' (FC) use for water bodies which Arizona designated as having an ''aquatic and wildlife'' use. For the standards to be approvable, EPA stated that the State must either revise its standards to include the FC use, or submit ''use attainability analyses'' (UAAs), for the subject waters. A UAA is a scientific assessment showing whether it is feasible to attain a particular use. See, 40 CFR 131.3(g) and 131.10(j).

ADEQ has completed UAAs showing that it need not designate the FC use for those effluent dominated or ephemeral waters which it has not already designated as having the FC use. EPA approved those UAAs in November 1995.

In December 1995, ADEQ proposed to revise its standards to add the FC use to waters within the State which have the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use. See, proposed R–18–11–104 and Appendix B of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. However, ADEQ has not completed that revision to its regulations.

Section 101(a)(2) (33 U.S.C. 1251(a)(2)) of the CWA establishes water quality goals for the nation, including a goal of water quality which provides for the protection and propagation of fish and wildlife and provides for recreation in and on the water by 1983. EPA's rules regarding the establishment of water quality standards confirm that such standards should, whenever attainable, provide water quality which satisfies the section 101(a)(2) goal. See, e.g., 40 CFR 131.2, 131.3(i), 131.6, and 131.20(a). In addition, whenever a State has designated uses that do not include the uses specified in section 101(a)(2), the State must conduct a UAA. 40 CFR 131.10(j). Section 101(a)(2) states that water quality should provide for the protection of fish, and EPA has implemented this provision in the past by seeking to ensure that such fish are suitable for human consumption. See, e.g., 40 CFR 131.36 (containing toxics criteria for those states not complying with section 303(c)(2)(B) of the CWA). Accordingly, EPA is proposing to designate the fish consumption use for those waters in Arizona having an ''aquatic and wildlife'' use, in those cases where the requirements for completing a UAA have not been met.

The proposed Federal rule would add the FC use to 100 stream segments or other water bodies. The affected stream segments and water bodies are listed in proposed section 131.31(c). Each of the affected waters has already been designated by Arizona as having the ''aquatic and wildlife (cold water fishery)'' or ''aquatic and wildlife (warm water fishery)'' use. EPA believes that only six NPDES permits allow discharges to the affected waters, and that none of those permits would have to be modified at this time to assure the FC use is met.

EPA is seeking comment on the proposed addition of the FC use to the waters described.

3. Practical Quantitation Limits

Arizona prescribed practical quantitation limits (PQLs) in the regulations establishing its water quality standards. See, R18–11–120, and Appendix C of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. Arizona's regulations define ''practical quantitation limit'' as the ''lowest level of quantitative measurement that can be reliably achieved during routine laboratory operations.'' (R18–11–101.37.) In September 1993, EPA, Region 9, disapproved Arizona's inclusion of the PQLs in its regulations. EPA, Region 9, stated that, in order for the standards to be approvable under section 303(c), they must protect the designated uses and must not be compromised by constraints related to analytical methods. EPA, Region 9, further stated that Arizona may choose to include the PQLs in a policy or guidance document separate from the standards regulations.

Inclusion of specific numeric PQLs in water quality standards is inappropriate because the criteria must be set at levels protective of the designated uses. See section 303(c)(2)(A). While constraints in the ability of analytical methods to detect pollutants below certain levels may be an appropriate factor in assessing compliance of a particular discharger with water quality-based effluent limitations, the inclusion of pollutant-specific numeric PQLs in the water quality standards themselves has the potential to compromise the criteria adopted by the State in its standards.

In December 1995, ADEQ proposed deleting the PQLs now prescribed in Appendix C from its regulations and adopting the PQLs in a guidance document. See, proposed R18–11–120. ADEQ has not completed its proposed rulemaking, nor has it completed its procedures for adopting the PQLs in the form of guidance.

EPA is proposing to adopt a provision in this federal rule that would modify the purpose of the PQLs prescribed in Arizona's water quality standards regulations, but this provision would not otherwise modify Arizona's water quality standards regulations as they relate to derivation of water quality criteria. Under the proposed Federal rule, the practical quantitation limits in Appendix C would not be water quality standards for the purposes of the CWA. EPA is seeking comment on the proposal.

C. Implementation Policies

Certain of the disapproved elements of Arizona's standards relate to procedures for implementing the state's narrative water quality criteria contained in R18–11–108. EPA has proposed two water quality standard provisions that would require the identification of appropriate procedures and methods for interpreting and implementing the state's narrative criteria with respect to toxicity and nutrients, and the implementation of a monitoring program related to mercury, in order to implement the requirements of R18–11–108. See proposed sections 131.31 (e) and (f). As EPA explained in its disapproval actions, such policies and procedures may be contained either in water quality standards regulations themselves, or may be included in a standards submission as policy or

guidance documents. EPA's position is that there are advantages to detailing such implementation procedures in the form of guidance rather than regulation, since guidance leaves the implementing agency flexibility in addressing the multitude of conditions and circumstances that can arise in implementation of the criteria. Guidance can also be revised more readily in response to advances in our understanding of these issues. Therefore, in addition to proposing the language contained in sections 131.31 (e) and (f), EPA is soliciting public comment on guidance documents EPA intends to use in carrying out this provision. The particulars of these proposals are discussed below.

EPA is proposing the language in sections 131.31(e) and (f) in compliance with section 303(c)(4) of the CWA and the District Court's order in *Defenders of Wildlife.* However, as stated in EPA's disapprovals, EPA does not believe that it is necessary that the State itself adopt regulatory provisions addressing these implementation issues. Therefore, should the State adopt acceptable policies and procedures prior to promulgation of a final rule by EPA, the Agency would not include the regulatory provisions in the final rule.

1. Implementation Policy for Narrative Nutrient Criteria

In September 1993, EPA disapproved the lack of implementation procedures for Arizona's narrative nutrient criteria. Arizona's narrative nutrient criteria provides that navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses. See, R18–11–108.A.6. At the time of the disapproval, Arizona had not adopted an implementation process for its narrative criteria. EPA noted at the time of the disapproval that Arizona had not shown that its narrative criteria provided protection substantially equivalent to that provided by numeric criteria related to nutrients that EPA had adopted for various waters in Arizona. See, 40 CFR 131.31.

EPA is proposing section 131.31(e) to address this deficiency in the State's standards and is soliciting comment regarding use of a policy to guide the Region's implementation of Arizona's narrative nutrient criteria set forth in ''EPA, Region 9, Policy for the Implementation of Arizona's Narrative Nutrient Criteria.'' Region 9's policy as set forth in that document is a general statement of policy, intended to guide the Region's implementation of its activities related to the narrative nutrient criteria, particularly the development of permit conditions in Section 402 NPDES permits to ensure the narrative criteria are met.

The document which EPA, Region 9, intends to use as its implementation policy for the narrative nutrient criteria is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Copies of the document may be obtained by contacting Gary Wolinsky at the address noted above. EPA, Region 9, is seeking comment on the policy.

2. Implementation Policy for Narrative Toxicity Criterion

In September 1993, EPA, Region 9, disapproved the lack of implementation procedures for Arizona's narrative toxicity criterion. Arizona's narrative toxicity criterion provides that navigable waters shall be free from pollutants in amounts or combinations that are toxic to humans, animals, plants and other organisms. See, R18–11–108.A.5. At the time of the disapproval, Arizona had not adopted implementation procedures for toxicity. EPA, Region 9, believed that, without procedures or a policy governing toxicity, the narrative criterion may not fully protect Arizona's designated uses.

EPA is proposing section 131.31(e) to address this deficiency in the State's standards and is soliciting comment regarding EPA's intent to utilize a biomonitoring implementation policy for Arizona's narrative criterion as it relates to chronic toxicity. The policy is set forth in ''EPA, Region 9, Policy on Using Biomonitoring to Implement Arizona's Narrative Toxicity Criterion''. Region 9's policy as set forth in that document is not a rule, but a general statement of policy to guide the Region's implementation of its activities related to the narrative toxicity criterion, particularly the Section 402 NPDES permit program and development of permit conditions to ensure the narrative criterion is met.

The document which EPA, Region 9, intends to use as its biomonitoring implementation policy for Arizona's narrative criterion as it relates to chronic toxicity is available for review and copying at Environmental Protection Agency, Region 9, Water Management Division, 75 Hawthorne St., San Francisco, CA 94105. Copies of the document may be obtained by contacting Gary Wolinsky at the address noted above. EPA, Region 9, is seeking comment on the policy.

3. Water Quality Criteria Protective of Wildlife for Mercury

Arizona has established numeric criteria for mercury for ''aquatic and wildlife,'' ''fish consumption,'' ''domestic water source'' and other uses designated for its waters. See, Appendix A of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations. As part of its consultation with EPA regarding Arizona's water quality standards pursuant to the Endangered Species Act, the U.S Fish and Wildlife Service (FWS) determined that Arizona's mercury criteria for protection of aquatic and wildlife uses were developed without consideration of bioaccumulative effects for predatory wildlife, and the FWS identified the adoption of mercury criteria protective of wildlife as a means to remove jeopardy to endangered species in the context of the Endangered Species Act.

Based upon FWS's determinations, EPA, Region 9, in April 1994 disapproved Arizona's lack of water quality criteria protective of wildlife for mercury.

While the FWS identified the adoption of a mercury criterion protective of wildlife as a reasonable and prudent alternative to avoid jeopardizing endangered and threatened wildlife species, further discussions between EPA, ADEQ, Arizona Game and Fish Department, and the FWS have led to the development of an alternative program to address the problem of mercury's impacts on endangered species. At present, there is inadequate information regarding mercury's impacts on wildlife in Arizona for EPA to develop a scientifically sound wildlife criterion for this pollutant. For this reason, EPA, the State and FWS worked to develop an alternative program for addressing potential problems associated with the impacts of mercury on wildlife. EPA intends the program will help ensure that existing protection for wildlife contained in the State's narrative criterion for toxicity will be properly implemented.

EPA is therefore proposing section 131.31(f) to address this deficiency in the State's standards, and is soliciting comment upon EPA's intent to implement a monitoring and source identification program to ensure that the requirements of this provision are met. The program is described in ''EPA, Region 9, Monitoring and Source Identification Program for Mercury to Assess Attainment of Arizona's Narrative Toxic Criterion.'' One of the program's objectives is to assess the magnitude and extent of mercury bioaccumulation in the prey base of the

bald eagle in Arizona. Under the program, EPA, ADEQ, the Arizona Game and Fish Department, and FWS will conduct a tissue monitoring program to evaluate the threat posed by mercury to bald eagles nesting along watercourses in Arizona. A concurrent monitoring program of the International Boundary Water Commission in the lower Colorado River basin will assess the bioaccumulation of mercury in the prey base of the brown pelican and the Yuma clapper rail. The program is not designed to immediately develop a specific mercury water quality criterion for the protection of wildlife. It instead is designed to identify water bodies where the bioaccumulation of mercury may affect endangered species, to guide the development of more extensive sampling programs to identify and quantify the contribution of mercury sources in watersheds where mercury is found to be bioaccumulating in aquatic prey species, and to guide the development of controls for such sources including, where appropriate, the adoption of site-specific water quality criteria.

EPA believes that Arizona's narrative criterion for toxicity contained in section R18–11–108.A, as supplemented by proposed section 131.31(f) and the program described above, are the most reasonable approach at this time for protecting the designated uses, including use of Arizona water by listed threatened and endangered wildlife species. EPA is currently engaged in consultation with the FWS regarding this approach. The Service has indicated its overall approval of this approach to dealing with the problem of mercury as it relates to the protection of wildlife. On January 17, 1996, the Service in a letter to EPA, Region 9, revised its determination which initially identified adoption of a mercury criteria as a reasonable and prudent alternative for removing jeopardy to endangered species.

EPA will consider comment upon the program, for the purpose of determining whether modifications to the program are warranted. The program description is available for review and copying at Water Management Division, EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Copies of the documents may be obtained by contacting Gary Wolinsky at the address noted above.

C. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1656 et seq.), federal agencies must assure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or adversely affect designated critical habitat of such species. Today's proposal would establish standards for waters which are presently unprotected by State-adopted standards due to the State's mining exclusion, would add the fish consumption use to various waters which presently do not have the protection afforded by that designation, and would remove the potential restriction on the protectiveness of the standards presented by the PQLs in the standards regulations. Today's action also provides protection for endangered and threatened species by seeking comment designed to improve the policies which EPA, Region 9, intends to use to guide its implementation of the State's nutrient- and toxicity-related criteria.

EPA has initiated section 7 consultation under the Endangered Species Act with the FWS regarding this rulemaking, and requested concurrence from the FWS that this action is unlikely to adversely affect threatened or endangered species. On January 17, 1996, the FWS in a letter to EPA, Region 9 agreed that various elements of EPA's proposal will improve the water quality standards program in Arizona and are not likely to adversely affect listed species nor result in the destruction or adverse modification of critical habitat.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

E. Executive Order 12875, Enhancing the Intergovernmental Partnership

In compliance with Executive Order 12875 EPA has involved state, local, and tribal governments in the development of this rule. EPA, Region 9, consulted with ADEQ through conference calls, meetings and review of draft and final documents. In addition, EPA held a meeting on December 14, 1995, in Phoenix, AZ, with members of the potentially affected public including municipalities, industries and environmental groups, to discuss the proposed action. EPA has scheduled a public hearing on the proposed action for February 29, 1996.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to assess whether its regulations create a disproportionate effect on small entities. Among its provisions, the Act directs EPA to prepare and publish an initial regulatory flexibility analysis (IRFA) for any proposed rule which may have a significant impact on a substantial number of small entities. For purposes of this proposed rulemaking, small entities are small dischargers, whether industrial or municipal.

The Agency concludes that this proposed rule would not have a significant impact on a substantial number of small entities. This proposed rule is limited to waters within Arizona and would not substantially impact the terms and conditions that dischargers would need to meet to comply with water quality standards. The requirements affect monitoring requirements that most likely will be included in future renewals of National Pollutant Discharge Elimination System (NPDES) permits and in new NPDES permits. There may be treatment process changes required in individual cases where the pollutant specific monitoring requirements identify non-compliance. EPA expects these process changes to be rare.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. These consultation requirements build on those of Executive Order 12875 (''Enhancing the Intergovernmental Partnership'').

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Paperwork Reduction Act

This proposed action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection requirement (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It should be noted that the monitoring program required in proposed Section 131.31(f) is not intended to impose additional reporting or recordkeeping burden on the State.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Toxic pollutants.

Dated: January 23, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.31 is amended by adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 131.31 Arizona.

* * * * *

(b) A water of the United States to which State adopted standards are not applicable by operation of R18–11–103.2 is subject to the water quality standards of the water of the United States from which it is impounded or, if not impounded from a water of the United States, the water quality standards of the water of the United States to which it is a tributary.

(c) The following waters have, in addition to the uses designated by the State, the designated use of fish consumption as defined in R18–11–101:

COLORADO MAIN STEM RIVER BASIN: Hualapai Wash, Jacob Lake, Lonetree Canyon Creek, Peeple's Canyon Creek, Red Canyon Creek, Sawmill Wash, Warm Springs Creek

LITTLE COLORADO RIVER BASIN: Boot Lake, Camillo Tank, Chilson Tank, Cow Lake, Crisis Lake (Snake Tank #2), Daves Tank, Deep Tank, Horse Lake, Long Lake—upper, Mud Lake, Pine Tank, Potato Lake, Puerco River, Quarter Circle Bar Tank, Rogers Reservoir, Sponseller Lake, Vail Lake, Zuni River

MIDDLE GILA RIVER BASIN: Aqua Fria River (Camelback Road to Avondale WWTP), Antelope Creek, Beehive Tank, Black Canyon Creek, Centennial Wash Ponds, Galena Gulch, Gila River (Felix Road to the Salt River), Gila River (Painted Rock Dam to the Colorado River), Hassayampa Lake, Hit Tank, Lynx Creek, Painted Rock Lake, Perry Mesa Tank, Queen Creek (Headwaters to the Superior WWTP), Queen Creek (Below Potts Canyon), Turkey Creek

RED LAKE BASIN: Red Lake

RIO MAGDALENA BASIN: Holden Canyon Creek, Sycamore Canyon Creek

RIO YAQUI BASIN: Abbot Canyon, Blackwater Draw, Buck Canyon, Dixie Canyon

Dry Canyon, Gadwell Canyon, Glance Creek, Gold Gulch, Johnson Canyon, Mexican Canyon, Mule Gulch (Headwaters to Bisbee WWTP), Soto Canyon

SALT RIVER BASIN: Coon Creek, Gold Creek, Salt River (I–10 bridge to the 23rd Avenue WWTP)

SAN PEDRO RIVER BASIN: Buehman Canyon Creek, Copper Creek, Garden Canyon Creek, San Pedro River (Redington to the Gila River), Turkey Creek

SANTA CRUZ RIVER BASIN: Agua Caliente Wash, Arivaca Creek, Bog Hole Tank, Cienega Creek (Headwaters to I–10), Cienega Creek (Below Del Lago dam), Davidson Canyon (I–10 to Cienega Creek), Empire Gulch (Below Empire Ranch Spring), Gardner Canyon Creek, Harshaw Wash, Huachuca Tank, Nogales Wash, Santa Cruz River (International Boundary to Nogales WWTP), Soldier Lake, Sonoita Creek (Above the town of Patagonia), Tanque Verde Creek, Tinaja Wash, Williams Ranch Tanks

UPPER GILA RIVER BASIN: Apache Creek, Bitter Creek, Chase Creek, Evans Pond, Markham Creek, Pigeon Creek, San Simon River

VERDE RIVER BASIN: Aspen Creek, Barrata Tank, Bitter Creek (Headwaters to the Jerome WWTP), Bitter Creek (Below 2.5 km downstream of the Jerome WWTP), Fossil Springs, Foxboro Lake, Granite Creek, Horse Park Tank, Meath Dam Tank, Willow Valley Lake

WILLCOX PLAYA: High Creek, Willcox Playa

(d) Appendix C (entitled ''Practical Quantitation Limits (PQLs)) of Title 18, Chapter 11, Article 1, of Arizona Administrative Rules and Regulations

shall not be applicable as a water quality standard for the purposes of the CWA.

(e) To implement the requirements of R18–11–108.A.5 and R–18–11–108.A.6 with respect to toxicity and nutrients, EPA shall identify appropriate procedures and methods for interpreting and implementing these requirements.

(f) To implement the requirements of R18–11–108.A.5 with respect to effects of mercury on wildlife, EPA (or the State with the approval of EPA) shall implement a monitoring program to assess attainment of the water quality standard.

[FR Doc. 96–1550 Filed 1–26–96; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5407–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Folkertsma Refuse Site from the National Priorities List; Request for Comments.

SUMMARY: The United States Environmental Protection Agency (US EPA) Region V announces its intent to delete the Folkertsma Refuse Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which US EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by US EPA, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, US EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before February 28, 1996.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd. (HSR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Kent County Public Library, 4293 Remembrance N.W., Walker, Michigan, 49554. Requests for copies of documents should be directed formally to the Region V Docket Office. The name, address and phone number of the Regional Docket Officer is Jan Pfundheller, U.S. EPA, Region V, 77 W. Jackson Blvd.(J–7J), Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Karen Sikora, Remedial Project Manager at (312) 886–1843, Gladys Beard, Associate Remedial Project Manager at (312) 886–7253, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd. (HSR–6J), Chicago, IL 60604 or Denise Gawlinski, Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd.(P–19J), Chicago, IL 60604, (312) 886–9859.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Folkertsma Refuse Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in the NCP 40 CFR 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact Jan Pfundheller, Docket Officer at the U.S. EPA Region V Office, 77 W. Jackson Blvd. (J–7J), to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The Folkertsma Refuse site is a former industrial landfill located at 1426 Pannell Road NW., in Walker, Michigan. The City of Walker, which borders the

northwest side of Grand Rapids, is located in southwestern Michigan, approximately 25 miles east of Lake Michigan in Kent County.

The site is a rectangular parcel of land measuring 1,000 by 400 feet and covering approximately 8 acres. The site is generally flat with 10 feet of vertical relief sloping from the northern boundary to the southern boundary. The surface of the landfilled portion of the site rises approximately 4 to 6 feet above the surrounding area. The landfill was not capped and foundry sand, the primary fill material, was exposed at the surface. However, the northeast portion of the site has been covered with a 3 inch layer of gravel. An unnamed creek (man made) running along the western property line and a drainage ditch running through the center of the landfill join at the southern end of the site and empty into a drain pipe. The drain pipe discharges to Indian Mill Creek just south of the site. Fishing and swimming have been reported to occur in Indian Mill Creek. However, Indian Mill Creek is not a major recreational area. Indian Mill Creek, which flows in an easterly direction, empties into the Grand River approximately 2 miles downstream of the site.

The property is currently leased by a pallet repair and manufacturing company. An office building and three warehouses are located on the site, and stacks of pallets are organized along the graveled area. The remainder of the site is overgrown with weeds, grass and trees and contains several pieces of junk machinery.

The site and the properties surrounding the site are zoned for and occupied by industry. There are, however, about ten to twelve residences along the south side of Pannell Road in close proximity to the north end of the site. These homes obtain water from private wells, which are upgradient from the site. There is also a residential subdivision approximately a quarter of a mile north of the site. The subdivision, also upgradient of the site, is serviced by the Grand Rapids Water Department, which obtains its water from Lake Michigan and the Grand River. Residences also exist south of the site, on the other side of Indian Mill Creek. These homes are downgradient of the site. Michigan Department of Natural Resources (MDNR) well records indicate that there is only one domestic well in this area; the other residences are serviced by the Grand Rapids Water Department. A door to door survey conducted in 1986 did not identify any additional water wells in this area.

East of the site is a tract of undeveloped woodland which was formerly operated as a muck farm. A muck farm is where black earth with decaying matter is harvested and used as fertilzer. The western boundary is bordered by nursery land and greenhouses. South of the site is a transfer station for a rendering company. Wetlands exist along a second drainage ditch approximately 85 feet east of the site, and in scattered areas along the north bank of Indian Mill Creek downstream from the site.

A preliminary assessment was completed in 1983. It was determined that an on-site investigation should be conducted. In 1984, an U.S. EPA field investigation team sampled groundwater and the sediment of the drainage ditch. Although the groundwater was not found to be contaminated, elevated levels of semi-volatile and inorganic chemicals were detected in the sediment samples. In 1985, the MDNR conducted an assessment of the site, and reported that there was approximately 40,000 cubic yards of waste at the site, consisting of foundry sand, chemical products, construction debris and other industrial wastes from heavy manufacturing operations. The site was proposed for the NPL in 1986. The listing was finalized in March 31, 1989, at 54 FR 13296.

The Remedial Investigation/ Feasibility Study (RI/FS) for the Folkertsma Refuse Site was initiated in 1989, and the final RI report was released in 1990. The major findings of the RI include:

- Landfilled materials contain volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), pesticides, and metals at concentrations above background levels.
- Some contaminants have migrated into a muck deposit beneath the landfill, or, in areas where there is little or no muck, to a limited extent into an underlying sand and gravel unit. Contaminants have also migrated into the sediments of the two on-site ditches and Indian Mill Creek. There is an estimated 12,300 cubic yards of contaminated black earth with decayed matter, muck, and 1,300 cubic yards of contaminated sediment at the site.
- Shallow groundwater beneath the landfill discharges to the two on-site drainage ditches and Indian Mill Creek. Deeper groundwater beneath the landfill flows beneath Indian Mill creek and continues toward the Grand River.
- Arsenic and polynuclear aromatic hydrocarbons (PAHs) were detected above Maximum Contaminant Levels (MCLs) in shallow unfiltered groundwater samples collected from beneath the landfill. Comparison of filtered and unfiltered groundwater data, however, indicates that these contaminants are not dissolved in the groundwater, but rather are attached onto particulate matter contained in the groundwater.
- Beryllium and cadmium were detected above water quality criteria for freshwater in unfiltered surface water samples collected from one of the drainage ditches. Beryllium was detected above the chronic standard at one location, while cadmium was detected above both the chronic and acute standards at two locations. Comparison of filtered and unfiltered drainage water samples, however, indicates that these chemicals are suspended in the drainage water rather than dissolved.
- The landfilled materials pose an unacceptable carcinogenic risk to human health under worst case conditions for ingestion (10^{-4}), direct contact (10^{-3}), and inhalation (10^{-4}). The main contaminants posing the risks are PAHs (ingestion and direct contact) and chromium (inhalation). No unacceptable human health risks were identified for exposure to the landfilled materials under probable case conditions.
- The ingestion of shallow groundwater beneath the landfill poses unacceptable potential future carcinogenic risks to human health of 10^{-3} and 10^{-2} under probable and worst case conditions respectively. The Hazard Indices calculated for future ingestion of shallow groundwater for probable and worst case conditions are 1.62 and 29.7 respectively. The risks posed by ingestion of shallow groundwater are based on the PAHs and high levels of arsenic detected in unfiltered groundwater samples collected from beneath the landfill. PAHs and arsenic, however, have a limited potential to migrate and were not detected in downgradient groundwater samples.
- Potential future carcinogenic and noncarcinogenic human health risks calculated for the ingestion of deep groundwater under worst case conditions are 10^{-4} and 2.54 respectively. These potential future worst case risks are also based on unfiltered groundwater samples collected from directly beneath the landfill. In addition, the chemical concentrations driving the risk are below MCLs.
- The landfilled materials and the contaminated sediments of the two on-site ditches and Indian Mill Creek pose an unacceptable risk to the environment through ingestion and direct contact.

These risks are posed to the animal populations living at or near the site who may wade or swim in the streams, or walk, lay, or burrow in the landfilled materials. These risks will not be significant if exposure is infrequent. Frequent exposure, however, may result in the bioaccumulation of trichloroethene, PCBs, and metals including arsenic, cadmium, chromium, lead, mercury, manganese, and nickel.

- Based on the findings of the RI, U.S. EPA conducted a Feasibility Study (FS) to evaluate remedial alternatives to address the contaminated landfilled materials. The FS was completed in consultation with the MDNR in mid-1990, and U.S. EPA's Proposed Plan was issued in consultation with the MDNR in March 1991. Following the close and evaluation of the public comment period, U.S. EPA signed the Record of Decision (ROD) in June 1991. The State of Michigan concured with the ROD. The major components of the selected remedy for the Folkertsma Refuse site include:
- Excavation of contaminated sediments from the two on-site ditches and Indian Mill Creek for consolidation with the landfilled materials;
- Conversion of the two on-site ditches into permeable underground drains to provide for continued site drainage;
- Construction of a cap over contaminated sediments and landfilled materials in accordance with the requirements of the Resource Conservation and Recovery Act Subtitle D and Michigan Solid Waste Management Act 641;
- Installation of passive gas vents to prevent the buildup of volatile organic compounds and methane, if necessary;
- Placement of a layer of topsoil and a vegetative covering over the clay cap and landfilled materials;
- Site fencing and institutional controls such as deed restrictions to prevent the installation of drinking water wells within the landfilled portion of the site and future disturbance of the cap and landfilled materials;
- Implementation of long-term groundwater and drainage water monitoring programs to ensure the effectiveness of the remedial action. In addition to monitoring the effectiveness of the source control portion of the remedial action, the long-term groundwater monitoring will also ensure the effectiveness of the groundwater remedy, which are various institutional controls. If contamination is detected beyond the area where the institutional controls are established, it may be necessary to modify these controls.

The remedy selected for the Folkertsma Refuse site eliminates or reduces the risks posed by the site through the use of engineering and institutional controls.

The selected remedy provides for the containment of the large volume of low level organic and inorganic waste material present in the landfill, the black earth with decaying matter or muck which is deposited beneath the landfill, and the contaminated sediments of the two on-site ditches and Indian Mill Creek; reduces the potential for contaminant migration into the groundwater; and reduces the potential for contaminated groundwater to move out from beneath the landfill.

Community involvement activities for the Folkertsma Refuse site began in October 1988, shortly before the RI was scheduled to begin. EPA conducted interviews with state and local officials, a local environmental organization, and Walker residents to determine the level of interest and concern over the site. A Community Involvement Plan (formerly CRP) was finalized in February, 1989.

The RI/FS for the Folkertsma Refuse site was released to the public in mid 1990 and was made available at the information repository. The Administrative Record is also maintained at the library and the Region V office in Chicago.

Remedial Action construction activities began in March 1994. Construction activities included: site clearing and regrading, including the relocation of an on-site pallet company operation; sediment excavation, solidification and consolidation with the landfilled materials; conversion of two on-site ditches into permeable underground drains and replacing the Indian Mill Creek drain pipe with an open channel; monitoring well abandonment, replacement and construction; installation of probes for landfill gas monitoring; and construction of a cap consisting of 2 feet of clay followed by a 6 inch sand drainage layer, 1 foot rooting zone layer and 6 inch topsoil layer.

The construction completion report dated February 1995 certifies completion of all remedial action and documents that the objectives of the remedial action have been met. This report certifies that all major components of the remedy are complete with the exception of environmental monitoring and maintenance, which is a long-term ongoing part of the operation and maintenance. However, the equipment to conduct the long-term monitoring was installed as part of this project.

The institutional controls for the site include restrictions to prohibit development of the Site, (including, but not limited to, excavation, construction and drilling), and the installation of groundwater drinking water wells at the Site. The institutional controls regarding future development of the Folkertsma Refuse Site and the future installation of groundwater drinking water wells have been implemented and shall be permanent.

EPA, with concurrence from the State of Michigan, has determined that Responsible Parties have implemented all appropriate response actions required. Therefore, EPA proposes to delete the site from the NPL.

Dated: October 19, 1995.

Michelle D. Jordan,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–1542 Filed 1–26–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, 306 and 307

RIN 0970–AB57

Child Support Enforcement Program; State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation and Optional Cooperative Agreements for Medical Support Enforcement Computerized Support Enforcement Systems

AGENCY: Office of Child Support Enforcement (OCSE).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Federal regulations governing procedures for making information available to consumer reporting agencies (CRAs). These provisions implement the requirements of section 212 of the Social Security Act Amendments of 1994 (Pub. L. 103–432) which require States to adopt procedures for periodic reporting of information to CRAs, effective October 1, 1995. This proposed rule would implement Public Law 104–35 which was enacted on October 12, 1995 which revises section 454(24) of the Social Security Act.

In addition, it would revise or remove regulations, in part or whole, in response to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate burdens on States, other governmental agencies or the private sector.

DATES: Consideration will be given to comments received by March 29, 1996.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:

Tom Killmurray (202) 401–4677 regarding mandatary reporting of child support information to consumer reporting agencies;

Marilyn R. Cohen (202) 401–5366 regarding all other regulatory revisions.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirement regarding submittal of the State plan preprint page was approved by the Office of Management and Budget under OMB control number 0960–0385. State plan preprint page revisions necessitated by this proposed rule will be submitted to OMB for approval. Otherwise, this rule does not require information collection activities and, therefore, no additional approvals are necessary under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Statutory Authority

These proposed regulations are published under the authority of section 466(a) of the Social Security Act (the Act), as amended by the Social Security Act Amendments of 1994. Section 466(a)(7), as amended, requires States to have procedures which establish periodic reporting of child support arrearage information to CRAs. The statutory effective date for required reporting of child support information in certain cases to consumer reporting agencies is October 1, 1995. The name of any parent who owes overdue support and is at least two months delinquent in the payment of support and the amount of such delinquency must be reported to CRAs.

Section 466(a)(7) contains three exceptions to the periodic reporting requirement. First, if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State. Secondly, any information with respect to an absent parent shall be made available under such procedures, only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State). Finally, such information shall not be made available to a CRA which the State determines does not have sufficient capability to make systematic and timely use of such information, or an entity which has not furnished evidence satisfactory to the State that the entity is a CRA.

This regulation is also proposed under the authority granted to the Secretary by section 1102 of the Act. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act. In accordance with the Presidential directive to executive branch regulatory agencies to identify existing regulations that are redundant or obsolete, OCSE has examined Part 300 of Title 45, Code of Federal Regulations to evaluate those areas where regulations should be removed.

Background

The Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) featured provisions that required critical improvements in State and local child support enforcement programs. Making child support delinquency information available to credit bureaus upon their request was one of the statutorily prescribed procedures required of States by the 1984 amendments.

Reporting overdue child support owed by obligors to consumer reporting agencies (CRAs) is an effective enforcement technique that has several benefits. It creates an incentive for obligors to make prompt and consistent payments, because delinquent payment information could negatively impact their credit history, thus endangering their purchasing power. Credit reporting may be particularly effective in cases involving self-employed obligors, which can be among the most challenging cases to work. Because many self-employed obligors are highly dependent on credit to operate their businesses, impeding their credit or purchasing power may deter noncompliance.

The addition of information about unpaid child support on individual credit records may make it less likely for obligors to incur other debts which could interfere with their ability to pay child support. Finally, reporting of child support delinquencies may help child support recipients obtain credit. Child support information is often used to substantiate income by custodial parents attempting to obtain credit. CRAs may use the information reported by IV–D agencies to verify overdue child support and subsequent payment information.

Much of the expansion of credit reporting was due to enactment of the Child Support Enforcement Amendments of 1984, which mandated that States respond to CRA requests for information on obligors who are $1,000 or more in arrears and reside in the State. Most States have gone beyond the legal requirement and are routinely reporting information to CRAs.

In addition, the Ted Weiss Act of 1992 (Pub. L. 102–537) amended the Fair Credit Reporting Act (15 U.S.C. 1681a[f]) to require consumer credit reporting agencies to include in consumer reports information, no more than seven years old, on overdue child support when provided by child support enforcement agencies, or received otherwise and verified by any local, State or Federal agency.

Currently, approximately 40 States operate routine periodic credit reporting processes, without the necessity of a request from the credit bureau. Most of the States report information to CRAs if arrearages reach or exceed $1,000; several report arrearages of lesser accruals. California has no minimum amount, and in fact, reports all ordered child support to credit bureaus irrespective of a delinquency. Under the proposed rule, States will have the flexibility to decide what ''periodic'' reporting is; some States may report monthly, others may report quarterly. The majority of States report information to CRAs on a monthly basis, a few others on a bimonthly or annual basis. The method of reporting varies. Thirty-six States report in an automated manner, using, for example, tape matches; nine States provide information manually; several States employ a combination of both reporting methods.

The President and Congress decided to improve this enforcement tool with the Social Security Act Amendments of 1994 (Pub. L. 103–432). These reforms are based on successful State practices as well as a recommendation by the U.S.

Commission on Interstate Child Support in its comprehensive report to the Congress, ''Supporting our Children: A Blueprint for Reform.'' Because Congress added the mandate to section 466(a) of the Act, reporting to credit bureaus is a requirement which States must meet as a condition of State plan approval under section 454 of the Act.

This proposed rule is also in response to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate mandated burdens on States, other governmental agencies or the private sector.

The Presidential Memorandum required agencies, by June 1, 1995, to conduct a page-by-page review of all regulations to eliminate or revise those that are outdated or otherwise in need of reform. OCSE conducted such a review, resulting in the proposed revisions, set forth in this document. Both substantive and technical changes are proposed including recodification such as renumbering and terminology revisions.

In our analysis of existing regulations, we took a cautionary approach recognizing that significant legislation to overhaul the welfare system, including major reform to the child support enforcement program, is actively pending before the 104th Congress. Accordingly, numerous existing rules will potentially be affected. We have deferred recommending any changes in existing rules which may be impacted by enactment of an incipient legislative change. However, we consider the changes in this proposed rule as only the first part of our response to the President's Regulation Reinvention Initiative. We will work with our partners to identify additional regulations which should be reevaluated given the new direction of regulatory reinvention.

Description of Regulatory Provisions

We propose to make technical revisions, including recodification, to the following regulations, in addition to amending section 303.105, ''Procedures for making information available to consumer reporting agencies''.

Section 301.1 General Definitions

We propose that the specified years for Applicable matching rate of ''1983 through 1987, 70 percent, FY 1988 and FY 1989, 68%,'' referenced in section 301.1 be removed as such dates have passed.

Section 301.15 Grants

We propose two technical revisions in this section. Part of the mailing address in paragraph (a)(1) should be updated by replacing, ''Social and Rehabilitation Service, Attention: Finance Division, Washington, DC 20201'' with ''Administration for Children and Families, Office of Program Support, Division of Formula, Entitlement and Block Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.'' In addition, we propose to replace the phrase, ''Subpart G Matching and Cost Sharing'' with ''45 CFR 74.23 Cost Sharing or Matching'' and replace the phrase ''Subpart I Financial Reporting Requirements'' with ''45 CFR 74.52 Financial Reporting'' in paragraph (e). We propose this latter revision to coincide with substantial revisions of 45 CFR Part 74 by DHHS August 25, 1994 (59 FR 43760).

Section 302.15 Reports and Maintenance of Records

This rule implements section 454(10) of the Act which does not specify use of microfilm for record retention. We propose that paragraph (b) ''Conditions for Optional Use of Microfilm Copies,'' be removed as microfilm use is obsolete due to automatic case tracking and electronic filing capability. The proposed change will result in the following: Paragraph (a) will be without designation, paragraphs (a)(1) and (a)(2) will be redesignated (a) and (b), and roman numerals (i) through (vii) will be redesignated as arabic numbers (1) through (7), respectively. Removal of the microfilm reference does not preclude States from continuing to use microfilm as an information storage medium.

Section 302.33 Services to Individuals Not Receiving AFDC or Title IV–E Foster Care Assistance

We propose to remove paragraph (c)(1), Application Fee, as it refers to requirements in effect prior to October 1, 1985, which date has passed. Thus, paragraph (2) will be renumbered as paragraph (1) and paragraph (3) will be renumbered as paragraph (2). In addition, we propose to remove paragraph (e) Assignment. Because a State is not required to take an assignment but has discretion to do so, this section is being removed as a ''non-mandatory'' aspect of existing rules. Removal of this subsection does not preclude a State from taking an assignment of rights from a non-AFDC recipient of IV–D services if necessary under State law or practice in order to deliver program service.

Section 302.34 Cooperative Arrangements

The authorities for this rule are sections 1102 and 454(7) of the Act. We propose to remove paragraph (b). As the result of the passage of time, cooperative agreements should meet § 303.107 criteria at this time. This revision would leave paragraph (a) without designation. We further propose to revise the first sentence of the remaining paragraph by adding ''under § 303.107'' after ''cooperative arrangements.''

Section 302.36 Provision of Services in Interstate IV–D Cases

The authorities for this rule are section 454(9) of the Act which addresses standards prescribed by the Secretary and section 1102 of the Act which addresses the Secretarial authority to issue regulations necessary for program administration. These requirements were placed in regulation to clarify that States are required to provide all necessary IV-D services in interstate cases. However, we propose to remove paragraphs (a)(1) through (a)(5), to eliminate repeating § 303.7(c)(7), explicit provisions which specify the various functional responsibilities by the responding State. This does not alter the requirement for provision of services; it merely removes unnecessary text referenced elsewhere. This proposed revision would remove ''for:'' at the end of paragraph (a) and subparagraphs (a)(1) through (a)(5), thus ending the paragraph with the word, ''chapter.''

Section 302.37 Distribution of Support Payments

This rule implements section 454(11) of the Act. We propose to remove it because it references §§ 302.32 and 302.51 which duplicate this section.

Section 302.54 Notice of Collection of Assigned Support

This rule implements section 454(5) of the Act which does not specify dates. Therefore, we propose to remove paragraph (a) which is obsolete as it specifies requirements in effect until December 31, 1992, which event has now passed.

Thus, paragraph (b) would be redesignated paragraph (a) and paragraph (c) would be redesignated paragraph (b), respectively.

We also propose to revise paragraph (b)(2) by adding the word, ''collected'' after the second mention of ''support'' to read as follows: ''The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the

amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.'' This addition is made to clarify that it is the amount actually collected, not the amount owed that must be included in the notice, and will be consistent with the statutory language at section 454(5)(A) of the Act.

Section 302.54(c)(1)(i) specifies one of the grounds upon which a State may be granted a waiver to permit the issuance of quarterly, rather than monthly, notices of the amount of support collected. Waivers granted under this criterion were based upon the State's lack of a computerized support enforcement system consistent with Federal requirements or the lack of an automated system that is able to generate monthly notices. Such waivers were valid through September 30, 1995. On October 12, 1995, Public Law 104–35 was signed into law, which revised Section 454(24) of the Social Security Act. The revised statute extends the date by which States will have in effect, and approved by the Secretary, a operational automated data processing and information retrieval system meeting all requirements of Federal law from October 1, 1995 to October 1, 1997. Because waivers available under § 302.54(c)(1)(i) are linked to the deadline by which States must have operational automated systems, we propose to revise the date clause to read ''Until September 30, 1997,''. Any automated system developed to meet the Federal requirements for a certified comprehensive Statewide system must produce mandated monthly notices of collections. States with previous waivers that expired September 30, 1995 can apply for extension of the waiver if the State does not have a computerized support enforcement system consistent with Federal requirements or lacks an automated system that is able to generate monthly notices. Extension of waivers will be granted as part of the State plan approval process.

Section 302.70 Required State Laws

Section 466(a) of the Act requires a State to enact laws providing for these new requirements. Consistent with implementation of the Family Support Act requirements, however, States may implement provisions using regulation, procedure, or court rule, instead of law, if such regulation, procedure, or rule has the same force and effect under State law on the parties to whom they apply.

We propose to revise section 302.70(a)(7) to reflect the statutory amendment which mandates reporting of certain child support arrearage information to credit reporting agencies. Each IV-D State plan requirement remains effective on the date indicated by the statute or implementing regulation.

Section 302.85 Mandatory Computerized Support Enforcement System

On October 12, 1995, Public Law 104–35 was signed into law, which revises Section 454(24) of the Social Security Act. The revised statute extends the date by which States will have in effect, and approved by the Secretary, an operational automated data processing and information retrieval system meeting all requirements of Federal law from October 1, 1995 to October 1, 1997. Because the deadline by which States must have operational automated systems has been changed, we propose to remove the date in paragraph (a)(2) ''October 1, 1995'' and replace it with ''October 1, 1997.''

Section 303.10 Procedures for Case Assessment and Prioritization

This rule was issued under authority of section 1102 of the Act, as part of implementation of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378). We propose to remove this section because case assessment and prioritization procedures are permissive and standards for an effective program at 45 CFR Part 303 require the State to provide necessary IV–D services in all cases in an efficient and effective manner. Therefore, it is not necessary to place this information in regulation.

Section 303.31 Securing and Enforcing Medical Support Obligations

This rule implements section 452(f) of the Act. We propose to replace references to ''§ 306.50(a)'' with ''§ 303.30'' in paragraphs (b)(6) and (b)(7). This technical change is required to correct a clerical error. Revisions to §§ 303.30 and 303.31 set forth in the final rule issued March 8, 1991 did not make these technical changes.

Section 303.73 Applications to Use The Courts of the United States to Enforce Court Orders

This regulation is based on sections 452(a)(8) and 460 of the Act. An Action Transmittal (AT) issued February 6, 1976 (OCSE–AT–76–1) and revised May 12, 1976 (OCSE–AT–76–8) covers paragraphs (a) and (b) of the regulation. Since the requirements in this regulation are infrequently used, it is sufficient for users to follow guidance in the AT. The AT gives express instructions for submitting cases for consideration for referral to Federal court. Paragraph (c) is unnecessary to be placed in regulation as it merely specifies internal instructions to the Regional Office.

Therefore, we propose to revise the end of the introductory portion of paragraph (a) by removing, ''to demonstrate that'' and completing the paragraph by adding, ''in accordance with instructions issued by the Office,'' thus removing paragraphs (a)(1) through (c).

Section 303.100 Procedures for Wage or Income Withholding

In the administration of wage or income withholding, § 303.100(g)(3) requires that effective October 1, 1995, States must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. This effective date for electronic funds transfer capability was directly linked to the date by which States are required to have operational automated child support enforcement systems. On October 12, 1995, Public Law 104–35 was signed into law, which revises Section 454(24) of the Social Security Act. The revised statute extends the date by which States will have in effect, and approved by the Secretary, an operational automated data processing and information retrieval system meeting all requirements of Federal law from October 1, 1995 to October 1, 1997. Because the deadline by which States must have operational automated systems has been changed, we propose to revise the introductory clause in paragraph (g)(3) to remove the phrase ''Effective October 1, 1995,'' and replace it with ''Effective October 1, 1997,''.

Section 303.105 Procedures for Making Information Available to Consumer Reporting Agencies

We propose to implement the requirements of amended section 466(a)(7) by revising the heading of 45 CFR 303.105, Procedures for making information available to consumer reporting agencies, to read: ''Procedures for periodic reporting of information to consumer reporting agencies.''

Under § 303.105(a), the definition of ''consumer reporting agency'' remains the same. The definition, which mirrors the language in the Fair Credit Reporting Act (15 U.S.C. 1681a[f]), has not been changed.

We propose to revise paragraph (b), to specify that States must use this procedure when a non-custodial absent parent owes overdue support exceeding $1,000 and is at least two months in arrears. The provision of information by

IV–D agencies is no longer triggered by the request of a CRA, but is now required to be reported under the above criteria. The use of such procedures is optional to the State in cases where the absent parent owes less than $1,000 in arrears. Allowing for optional reporting in cases of less than $1,000 in arrears is in keeping with the Federal/State partnership in administering child support enforcement and allowing for maximum State flexibility.

States may wish to take advantage of reporting when a non-custodial parent owes overdue support less than $1,000 because many child support orders have low monthly payment amounts. Otherwise, several months arrearage could result before triggering reporting at the $1,000 threshold. Some States, including California, have found it beneficial to report all child support accounts to CRAs for such reasons as ease of administration and conformance to the credit reporting industry standard of reporting all debt and payment information. In order to give States maximum flexibility, there are no further requirements regarding the frequency or manner in which delinquent support information is shared with CRAs. This flexibility is also intended to allow for uninterrupted reporting in States where current procedures may already meet the new requirement.

The cases in which information is sent to the CRA may be further limited by the State through the use of State guidelines (45 CFR 303.105(b)). Criteria may be developed to determine which cases are inappropriate for reporting to CRAs. For example, State developed guidelines might exclude the reporting of cases where abuse or violence has been threatened or has occurred.

In addition, we propose to revise paragraph (b) by removing the second sentence specifying that State guidelines should be made generally available to the public as to when use or application of reporting child support arrearages to credit reporting agencies would not carry out the purposes of the program or would be otherwise inappropriate in the circumstances. We are proposing this revision since the statute mandates reporting of all cases which qualify based on arrearages and expressly specifies the bases for exceptions. Guidelines for not submitting cases are no longer appropriate.

We invite State comments on any existing reporting criteria they may use. Comments received on this subject will be widely disseminated because examples may be helpful to other States in formulating their own guidelines.

In accordance with section 466(a)(7)(C) of the Act, under proposed paragraph (c) of section 303.105, States are required to withhold information from a CRA which does not have sufficient capability to make accurate use of the information in a systematic and timely manner. In order to maximize flexibility, States will be free to use their own criteria in determining what constitutes a ''systematic and timely'' use of the reported information under amended section 466(a)(7)(C) of the Act. States are also required to withhold information from an entity which has not furnished satisfactory evidence to the State that it is a CRA.

Under amended section 466(a)(7) of the Act, the provision which allowed for a fee for furnishing such information to be imposed on the requesting CRA by the State has been deleted. Therefore, we propose that the corresponding text involving the optional fee under the existing § 303.105(c) be removed.

In accordance with section 466(a)(7)(b) of the Act, paragraph (d) requires the State to provide the noncustodial parent an advance notice and an opportunity to contest the accuracy of this information. Paragraph (e) requires the State to comply with all applicable procedural due process requirements of the State before releasing the information. The requirements imposed in paragraphs (d) and (e) have been required by the statute since it was enacted in 1984 and were not amended. Therefore, paragraph (d) and (e) remain unchanged by this proposed rule.

To ensure that this proposed rule maximizes State flexibility, we generally have not proposed to add regulatory requirements that go beyond statutory requirements. However, there is one area where we believe additional Federal regulatory guidance is needed—credit reporting in interstate cases. Because interstate cases involve interaction between one or more States, there is a need for national standards to ensure uniformity and clarity.

The statute does not address which State (initiating or responding) should report to credit bureaus in interstate cases. Based on input that we have received from several States, Federal guidance is needed in this area to avoid duplication, confusion, and double-reporting. For example, if both the initiating and responding States report arrears owed under a child support order in a case, both reports may appear on the obligor's credit record. As a result, the credit record would indicate that the obligor owes two separate debts to two different child support agencies, when in fact the two reports are for the same arrearage. Such misleading double-reporting creates unnecessary duplication of effort for child support agencies, generates time-consuming inquiries and complaints, and is unfair to obligors.

To address these problems, we are proposing new paragraph (f) in § 303.105 which provides: for cases where an initiating State requests, in accordance with § 303.7(b), a responding State to enforce a support order, the responding State will report to consumer reporting agencies. The initiating State will not report.

We are proposing that the responding State be responsible for credit reporting since it is usually the State that implements enforcement remedies (except for Federal income tax refund offset which is implemented by the initiating State). The responding State can coordinate credit reporting with the other enforcement techniques that it is using. In addition, the responding State may have the most up-to-date payment and location information about the obligor. Finally, since the obligor often lives in the responding State, the responding State is more likely to report to credit reporting agencies which focus on the area where the obligor lives. Many credit reporting agencies only maintain records for certain localities and regions, and even a major credit bureau may have more complete information for individuals in a particular region of the country.

Credit reporting in interstate cases where there are multiple support orders governing the same period of time can be particularly complex. Under the Uniform Reciprocal Enforcement of Support Act (URESA), interstate proceedings are considered ''new'' proceedings, even if a valid, enforceable support order already exists. As a result, multiple, yet valid, orders in varying amounts in different States have been entered for the same children. If arrearages owed for the same period of time under more than one order are reported to credit agencies, the obligor will appear to owe multiple debts even though, under State law, an obligor receives credit under all orders for any payment made. Therefore, the reporting of arrears under multiple orders exaggerates the amount that the obligor actually owes.

The Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (Pub. L. 103–383) will eventually alleviate the multiple order problem. These laws, which together limit the ability of a State to enter or modify an order if a valid order already exists, will replace multiple orders with a system

under which only one support order is effective at any one time. However, this transition will take a matter of years—until all of the children with multiple orders emancipate. We welcome comments concerning possible ways to address this multiple order problem.

In addition, we welcome comments regarding the general issue of credit reporting in interstate cases, particularly whether there is a need for Federal regulation in this area and whether you agree with our proposal.

Finally, in addition to reporting information to CRAs, States routinely obtain valuable location information from CRAs. The requirements of this section do not preclude a State from obtaining information from CRAs. Many States already reap the benefits of using CRAs as a source of valuable information. States may make requests of consumer reporting agencies for such purposes as location of non-custodial parents, location of assets, and determination of ability to pay support.

Section 304.10 General Administrative Requirements

We propose to replace the parenthetical phrase, ''(with the exception of Subpart G, Matching and Cost Sharing and Subpart I, Financial Reporting Requirements)'' with ''(with the exception of 45 CFR 74.23, Cost Sharing or Matching and 45 CFR 74.52, Financial Reporting).'' We are proposing this revision to coincide with substantial revisions of 45 CFR Part 74 by DHHS August 25, 1994 (59 FR 43760).

Section 304.20 Availability and Rate of Federal Financial Participation

We propose to make several technical revisions to update and correct this section. In paragraph (b)(1)(iii), we propose to replace the phrase ''Subpart P'' with ''* * * in accordance with the Procurement Standards found in 45 CFR 74.40 et. seq..'' We are proposing this revision to coincide with substantial revisions of 45 CFR Part 74 by DHHS August 25, 1994 (59 FR 43760) because the regulation is applicable to both agencies. In paragraph (b)(1)(vi), we propose to change the reference from ''§ 302.16'' to ''§ 304.15.'' We propose this technical revision because § 304.15 is a cross-reference to the DHHS regulations on cost allocation at 45 CFR Part 95, Subpart E which replaced 45 CFR 302.16. In paragraph (b)(3)(iv), we propose to replace ''attachment'' with ''withholding'', in order to make the terminology consistent with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) which created a new section 466 of the Act including paragraph (a)(1) and (b) for ''wage withholding'' and implementing regulations at 45 CFR 303.100. In paragraph (b)(8), we propose to correct a clerical error by replacing ''§ 302.2'' with ''§ 303.2.'' Finally, in paragraph (b)(11), we propose to remove ''Part 306, Subpart B, of this chapter'' and replace with ''sections 303.30 and 303.31''. We are proposing this technical fix to update this section to reflect the revision made in 1990 to redesignate Part 306 Subpart B as sections 303.30 and 303.31.

Section 304.95 State Commissions on Child Support

This rule was required by section 15 of Public Law 98–378 to be implemented by December 1, 1984 with a report of findings and recommendations to the Governor by October 1, 1985. We propose to remove this section as the requirement for a State to have a Commission on Child Support as a condition of eligibility for Federal funding expired on October 1, 1985. Although it is no longer mandatory, nothing precludes a State from having such a Commission.

Part 306 Optional Cooperative Agreements for Medical Support Enforcement; Section 306.0 Scope of This Part, Section 306.2 Cooperative Agreement, Section 306.10 Functions To Be Performed under a Cooperative Agreement, Section 306.11 Administrative Requirements of Cooperative Agreements, Section 306.20 Prior Approval of Cooperative Agreements, Section 306.21 Subsidiary Cooperative Agreements With Courts and Law Enforcement Officials, Section 306.22 Purchase of Service Agreements, and Section 306.30 Source of Funds

Cooperative agreements for medical support enforcement was first added to the IV–D regulations (Part 306) in the February 11, 1980 joint final rule by the Health Care Financing Administration (HCFA) and OCSE implementing section 11 of Public Law 95–142 which added a new section 1912 to the Social Security Act. Section 1912 authorized the Third Party Liability (TPL) program in the Medicaid agency and required the State to require Medicaid recipients, as a condition of Medicaid eligibility, to assign their support rights to any medical support and to cooperate with the State in establishing paternity and obtaining third party payments. Section 1912 also required the State plan to provide for the State Medicaid agency to make cooperative agreements with the State IV–D agency, and other appropriate agencies, courts, and law enforcement officials to assist in the TPL program, with an incentive payment to political subdivision, other State, or other entity that makes the TPL collection.

As a result of an increasing degree of responsibility for IV–D agencies to perform medical support functions, very few of the functions listed in § 306.10 continue to be optional. Many of the requirements listed as ''optional'' for IV–D agencies to perform under agreements with State Medicaid agencies have become mandatory under title IV–D (e.g., obtain sufficient health insurance information, § 303.30; secure health insurance coverage, § 303.31). This leaves only two optional procedures in § 306.10 ((f) file insurance claims and (h) take direct action to recover TPL).

We propose that Part 306 be removed and reserved. This will give States flexibility to enter into cooperative agreements with Medicaid agencies to perform activities which are beyond the mandatory medical support activities of the IV–D program. Cooperative agreements for medical support enforcement is a statutory requirement mandated on the Health Care Financing Administration (HCFA) which was placed in regulation at 42 CFR 433.152 but optional for IV–D. This proposed removal will not affect the continuation of existing cooperative agreements or formulation of future agreements between State child support agencies and State Medicaid agencies.

Section 307.5 Mandatory Computerized Support Enforcement Systems

On October 12, 1995, Public Law 104–35 was signed into law, which revises Section 454(24) of the Social Security Act. The revised statute extends the date by which States will have in effect, and approved by the Secretary, an operational automated data processing and information retrieval system meeting all requirements of Federal law from October 1, 1995 to October 1, 1997. Because the deadline by which States must have operational automated systems has been changed, we propose to remove the date in paragraph (a) ''October 1, 1995'' and replace it with ''October 1, 1997.''

Section 307.15 Approval of Advance Planning Documents for Computerized Support Enforcement Systems

On October 12, 1995, Public Law 104–35 was signed into law, which revises Section 454(24) of the Social Security Act. The revised statute extends the date by which States will have in effect, and approved by the Secretary, an operational automated data processing

and information retrieval system meeting all requirements of Federal law from October 1, 1995 to October 1, 1997. Because the deadline by which States must have operational automated systems has been changed, we propose to remove the date in paragraph (b)(2) ''October 1, 1995'' and replace it with ''October 1, 1997.''

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals and results from restating the provisions of the statute. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

List of Subjects

45 CFR Part 301

Child support, Grant programs/social programs.

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 306

Child support, Grant programs/social programs, Medicaid.

45 CFR Part 307

Child support, Grant programs/social programs, Computerized support enforcement systems.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: December 1, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons discussed above, we propose to amend title 45 chapter III of the Code of Federal Regulations as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for Part 301 continues to read as set forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by revising the definition for ''Applicable matching rate'' to read as follows:

§ 301.1 General definitions.

* * * * *

Applicable matching rate means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year. The applicable matching rate for FY 1990 and thereafter is 66 percent.

* * * * *

§ 301.15 [Amended]

3. In 301.15, paragraph (a)(1) is amended by revising ''Social and Rehabilitation Service, Attention: Finance Division, Washington, DC 20201'' to read ''Administration for Children and Families, Office of Program Support, Division of Formula, Entitlement and Block Grants, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447'' and paragraph (e) is amended by revising, ''Subpart G Matching and Cost Sharing'' to read ''45 CFR 74.23 Cost Sharing or Matching'' and revising ''Subpart I Financial Reporting Requirements'' to read ''45 CFR 74.52 Financial Reporting.''

PART 302—STATE PLAN REQUIREMENTS

4. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

§ 302.15 [Amended]

5. In section 302.15, paragraph (b) is removed and paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i) through (vii) and (2) are redesignated as § 302.15 introductory text, (a) introductory text, (a)(1) through (7) and (b) respectively.

§ 302.33 [Amended]

6. In section 302.33, paragraph (c)(1) is removed, paragraphs (c)(2) and (c)(3) are redesignated as (c)(1) and (c)(2), and paragraph (e) is removed.

§ 302.34 [Amended]

7. In section 302.34, paragraph (b) is removed, paragraph (a) is amended by removing the paragraph designation and by adding ''under § 303.107'' after ''cooperative arrangements'' in the first sentence.

§ 302.36 [Amended]

8. In section 302.36, paragraph (a) introductory text is amended by removing ''for:'' and inserting a period in its place at the end of the paragraph and removing paragraphs (a)(1) through (a)(5).

§ 302.37 [Removed]

9. Section 302.37 is removed.

10. In section 302.54, paragraph (a) is removed, paragraphs (b) and (c) are redesignated (a) and (b), respectively, the reference to ''Until September 30, 1995'' in new designated paragraph (b)(1)(i) is revised to read ''Until September 30, 1997'', and newly designated paragraph (a)(2) is revised to read as follows:

§ 302.54 Notice of collection of assigned support.

* * * * *

(a) * * *

(2) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.

* * * * *

11. Section 302.70(a)(7) is revised to read as follows:

§ 302.70 Required State laws.

(a) * * *

(7) Procedures which require the State to periodically report information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies in accordance with § 303.105 of this chapter;

* * * * *

§ 302.85 [Amended]

12. In Section 302.85, reference to ''October 1, 1995'' in paragraph (a)(2) is revised to read ''October 1, 1997.''

PART 303—STANDARDS FOR PROGRAM OPERATIONS

13. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 303.10 [Removed]

14. Section 303.10 is removed.

§ 303.31 [Amended]

15. In 303.31, reference to ''§ 306.50(a)'' is revised to read § 303.30 in paragraphs (b)(6) and (b)(7).

16. Section 303.73 is revised to read as follows:

§ 303.73 Applications to use the courts of the United States to enforce court orders.

The IV–D agency may apply to the Secretary for permission to use a United States district court to enforce a support order of a court of competent jurisdiction against an absent parent who is present in another State if the IV–D agency can furnish evidence in accordance with instructions issued by the office.

§ 303.100 [Amended]

17. In section 303.100, reference to ''October 1, 1995'' in paragraph (g)(3) is revised to read ''October 1, 1997.''

18–19. Section 303.105 is amended by revising the section heading and paragraphs (b) and (c) and adding new paragraph (f) to read as follows:

§ 303.105 Procedures for periodic reporting of information to consumer reporting agencies.

* * * * *

(b) For cases in which the amount of overdue support exceeds $1,000 and is at least two months in arrears, the IV–D agency must have in effect procedures to periodically report the name of the absent parent and the amount of arrears to consumer reporting agencies.

(c) The information shall not be made available to a consumer reporting agency which:

(1) the State determines does not have sufficient capability to make use of the information in a systematic and timely manner; or

(2) has not furnished satisfactory evidence to the State that it is a consumer reporting agency.

* * * * *

(f) *Interstate.* For cases where an initiating State requests, in accordance with § 303.7(b), a responding State to enforce a support order, the responding State will report to consumer reporting agencies in accordance with this section. The initiating State will not report.

PART 304—FEDERAL FINANCIAL PARTICIPATION

20. The authority citation for Part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396(p), and 1396(k).

§ 304.10 [Amended]

21. In section 304.10, the parenthetical phrase ''(with the exception of Subpart G, Matching and Cost Sharing and Subpart I, Financial Reporting Requirements)'' is revised to read ''(with the exception of 45 CFR 74.23, Cost Sharing or Matching and 45 CFR 74.52, Financial Reporting).''

§ 304.20 [Amended]

22. In section 304.20, paragraph (b)(1)(iii) introductory text is amended by replacing ''Subpart P'' with ''in accordance with the Procurement Standards found in 45 CFR 74.40 et seq.'', paragraph (b)(1)(vi) is amended by revising the reference to ''§ 302.16'' to read ''§ 304.15'', paragraph (b)(3)(iv) is amended by revising the term ''attachment'' to read ''withholding;'', paragraph (b)(8) is amended by revising the reference ''§ 302.2'' to read ''§ 303.2'' and, paragraph (b)(11) is amended by revising ''Part 306, Subpart B, of this chapter'' to read ''sections 303.30 and 303.31''.

§ 304.95 [Removed]

23. Section 304.95 is removed.

PART 306—OPTIONAL COOPERATIVE AGREEMENTS FOR MEDICAL SUPPORT ENFORCEMENT—[REMOVED AND RESERVED]

24. Part 306 is removed and reserved.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

25. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, 667, and 1302.

§ 307.5 [Amended]

26. In section 307.5, reference to ''October 1, 1995'' in paragraph (a) is revised to read ''October 1, 1997.''

§ 307.15 [Amended]

27. In section 307.15, reference to ''October 1, 1995'' in paragraph (b)(2) is revised to read ''October 1, 1997.''

[FR Doc. 96–1254 Filed 1–26–96; 8:45 am]

BILLING CODE 4150–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 95–176, DA 96–53]

Television Services; Cable Television Services; Closed Captioning and Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; extension of comment and reply comment period.

SUMMARY: This action extends the deadline for filing comments and reply comments to the Notice of Inquiry in the above-cited docket. It is taken in response to requests to extend the comment and reply comment period made by the National Association of Broadcasters, the Association of Independent Stations, Inc., Capital Cities/ABC, Inc., CBS Inc., Fox Broadcasting, and NBC, Inc., and by The National Association of the Deaf. The intended effect of this action is to allow the parties to the proceeding to have additional time in which to file comments and reply comments.

DATES: Comments are due on or before February 28, 1996, and reply comments are due on or before March 15, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Somers (202–418–2130) or Charles Logan (202–418–2130), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order Granting Extension of the Time for Filing Comments in MM Docket No. 95–176, DA 96–53, adopted January 22, 1996 and released January 22, 1996. The complete text of this *Order* 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., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Order Granting Extension of Time for Filing Comments

1. On December 1, 1995, the Commission adopted a *Notice of Inquiry* in MM Docket No. 95–176 (NOI), FCC–95–484, 60 FR 65052 (December 18, 1995), seeking comment on a wide variety of issues relating to closed captioning and video description services. Comments were initially due to be filed by January 29, 1996, and reply comments by February 14, 1996.

2. On January 16, 1996, a Motion to Extend the Comment Period was filed by the National Association of Broadcasters, the Association of Independent Television Stations, Inc., Capital Cities/ABC, Inc., CBS Inc., Fox Broadcasting Company, and the National Broadcasting Company, Inc. (collectively referred to as ''Broadcasters''). Broadcasters point out that both the House and Senate have passed versions of telecommunications legislation that would require the Commission to adopt new rules requiring closed captioning of most television programming. *See* NOI at ¶¶ 7–8, 25–31. They claim that the information the Commission will need to gather will vary significantly depending on whether any such

legislation is enacted. They argue that ''the resources of both Broadcasters and the Commission would be poorly used in preparing and considering comments raised in the [NOI] when a second set of comments would almost certainly have to be sought on similar issues if Congress adopts the captioning legislation.'' Accordingly, Broadcasters request the Commission to extend the filing date for comments in this proceeding until 30 days after the date of enactment of the Telecommunications Act of 1995, or—if Congress fails to adopt a bill—until a further order of the Commission.[1]

3. On January 17, 1996, The National Association of the Deaf (NAD) requested that the Commission extend the due date for filing comments and reply comments in this proceeding by 30 days. In support of its request, NAD argues that the occurrence of certain events make meeting the existing deadlines extremely difficult, if not impossible. First, NAD notes that Gallaudet University announced the closing of the National Center for Law and Deafness (Law Center), effective January 19, 1996. The Law Center, which NAD states has played a key role in coordinating and preparing comments on Commission proceedings affecting telecommunications and television access, was given only seven weeks notice of its closing date after being in operation for twenty years. NAD claims that because the time allotted for shutting down the Law Center and transferring its operations was so short, the Law Center had little or no time to begin to address the matters raised in the NOI. NAD states that it will be assuming the role formerly filled by the Law Center in addressing telecommunications matters raised by the Commission. Second, NAD notes that the severe winter snow storm that struck the Northeast forced closure of many private and governmental offices for approximately the entire week of January 8–12, 1996, impeding NAD's ability to gather the information needed for a proper response to the NOI. Finally, the partial closure of the Federal government resulted in a furlough of employees at several governmental agencies, including the Department of Education, which may have relevant information to file in connection with this proceeding.[2]

4. We decline to grant Broadcasters' request for an indefinite extension pending developments on the pending telecommunications reform legislation. While we understand that further comments may ultimately be necessary, we believe that submission of the information sought by the NOI will provide a useful foundation for further Commission action whether or not that legislation is enacted. The Commission will be able to expedite the implementation of any legislation that becomes law and accelerate completion of any further proceedings the Commission may be required by the legislation to conduct on both closed captioning and video description. Further, the comments submitted should provide us with information that would be useful in preparing any Notice of Proposed Rule Making that might be necessary to implement the legislation. If the legislation is not enacted, the record in this proceeding will enable the Commission to ''assess the possibility of adopting regulatory requirements in this area under its existing statutory authority.'' NOI at ¶ 26.

5. With regard to NAD's request for an extension, we are mindful that Section 1.46 of the Commission's Rules, 47 CFR § 1.46, articulates a Commission policy that extensions of time for filing comments in rulemaking proceedings are not to be routinely granted. Nevertheless, we find that good cause exists for granting a short extension of the comment and reply comment deadlines. We take note of the following factors which, viewed in their totality, we believe warrant grant of a 30-day extension: (1) the abrupt closing of the Law Center at Gallaudet University, and the need for its successor organization, NAD, to gather comprehensive information on short notice; (2) the unusually severe winter storms, which have recently stalled mail deliveries, disrupted transit, and forced many workplaces to close for up to a week, and have therefore complicated efforts to prepare comments, particularly for those parties whose comments required coordination among multiple entities or persons; and (3) the partial federal government closure, which has made it difficult for parties to gather from agencies relevant information regarding closed captioning and video description services.

6. Accordingly, it is ordered, that the request filed by the National Association of the Deaf for an extension of time in which to file comments and reply comments in response to the *Notice of Inquiry* in MM Docket No. 95–176 IS GRANTED to the extent indicated herein. It is further ordered that the request of the National Association of Broadcasters, *et al.*, for an extension contingent on the passage of the pending telecommunications legislation is denied.

7. It is further ordered, that the time for filing comments in the above-captioned proceeding is extended to February 28, 1996, and the time for filing reply comments is extended to March 15, 1996.

8. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR §§ 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Renee Licht,

Deputy Chief, Policy Mass Media Bureau.

[FR Doc. 96–1498 Filed 1–26–96; 8:45 am]

BILLING CODE 6712–01–P

[1] Broadcasters request in the alternative that the Commission extend the comment deadlines by 30 days.

[2] NAD also supports its request with the argument that ''many individuals were out of town or otherwise unavailable'' during the Christmas holidays. We do not believe that this fact provides any justification for an extension of the comment period.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 960111003–6003–01; I.D. 121895B]

RIN 0648–AI48

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule and proposed catch sharing plan.

SUMMARY: NMFS proposes to approve and implement revisions to the Catch Sharing Plan (Plan) for harvests of Pacific halibut off Washington, Oregon, and California under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). This action is necessary to revise the Plan to address the needs of fisheries in varying geographical areas. Proposed changes to the Plan would affect sport fisheries and the incidental catch of halibut in the salmon troll fishery. NMFS also proposes sport fishery regulations to implement the Plan in 1996. The proposed rule is intended to carry out the objectives of the International Pacific Halibut Commission (IPHC) and the Pacific Fishery Management Council (Council).

DATES: Comments on this proposed rule must be received on or before February 12, 1996.

ADDRESSES: Send comments to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Accordingly, Catch Sharing Plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed since 1988 by the Council in accordance with the Halibut Act. For 1995 and beyond, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, 14663–14665, March 20, 1995) that allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the non-Indian commercial harvest, and 15 percent for harvests of halibut caught incidental to the salmon troll fishery. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18'' N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas each with separate allocations, seasons, and bag limits.

Following the first year of the new Plan, fishery participants recommended changes to the Plan to the Council at its July public meeting. Further, the Plan only provided sport fishery structuring for the area off Oregon for 1995, with the expectation that the Council would develop a long-term structuring in 1996 after 1-year's experience with the Plan. Specific proposals to change the Plan were considered by the Council at its August and October public meetings. The changes proposed in this rule reflect the recommendations of the Council for halibut fisheries off the coasts of Washington, Oregon, and California for 1996 and beyond. Proposed changes to the Plan affect certain sport fishery subareas and management of incidental halibut harvest in the salmon troll fishery as described below. The Council also made recommendations on the specific seasons, dates, and other management measures in the sport fisheries necessary to implement the Plan in 1996.

Proposed Changes to the Plan

For the sport fishery in the Washington Inside Waters Subarea (Puget Sound including Strait of Juan de Fuca), the Council wanted more flexibility and user input in the season structuring for this fishery. Sport users in this area have advised that they need to know what the quota will be before they can provide constructive input on which days of the week the fishery should be open. Because the final TAC is not known until after the IPHC annual meeting in late January, this prevents sport users from providing such input at the Council's fall public meeting when final recommendations are made on the halibut fisheries in Area 2A. To rectify this, the Council recommended that the Plan be changed to allow the season structuring for this fishery to be developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the allowable catch is set by IPHC at the end of January. This change in the Plan would allow sport users in conjunction with state fishery managers to recommend the open days per week according to how many total days they believe will be available in a season and the desired season length structured to ensure that the subarea quota is not exceeded. NMFS is proposing to implement the Council-recommended change to the Plan as shown in the proposed regulations in § 301.23(f)(1)(i).

For the sport fishery in the Washington South Coast Subarea, the Council recommended changes to the Plan on the closure of this fishery that would allow for a longer time frame for the nearshore sport fisheries to retain incidentally caught halibut. The Council recommended that the general sport halibut season close when 1,000 lb (0.45 mt) are projected to remain in the subarea quota, so as to allow for incidental halibut catch in the nearshore sport fisheries. To provide for this, the Council recommended that immediately following the general season closure, the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. would open and continue open for 7 days per week until either the subarea quota is achieved or until the season ending date, whichever occurs first. The area proposed for this second opening is not generally considered a halibut fishing area, although anglers do occasionally catch halibut in those waters. With a 1,000 lb (0.45 mt) allowance for the second opening, sport fishers would be able to retain halibut that is incidentally caught during fisheries for species other than halibut. NMFS is proposing to implement this Council-recommended change to the Plan as shown in the proposed regulations in § 301.23(f)(1)(iii).

For the sport fishery in the Oregon Central Coast and Southern Oregon Coast Subareas, the Council developed provisions for the Plan for the sport fisheries in these areas for 1996 and beyond. Currently, the Plan provides for sport structuring only for 1995. Fisheries participants from the Oregon coast requested that the Council consider a later opening date for the sport fishery off Oregon so as to avoid some of the foul weather associated with early opening dates. The proposed Plan is modified slightly from 1995 to remove the specific opening dates. The opening dates would be set annually, based on the TAC and the standards set in this paragraph. In addition, the Council provided specific sport fishery seasons, dates, and other management measures for 1996. The Council recommended a sport fishery off Oregon in waters south of Cape Falcon beginning on May 16, rather than on the May 4 opening date used in 1995. The May 16, 1996 opening date reflects a compromise between a wide range of proposed opening dates. For the Oregon central coast subarea only, the Council recommended that the allocation in the Plan for the first season be set at 68 percent (slightly reduced from 71.5 percent in 1995) of the Central coast allowable catch, and the second season be set at 7 percent (an increase over the 3.5 percent in 1995). Private boat anglers particularly wish to avoid fishing in turbulent spring weather and requested that a greater quantity of the Oregon sport fishery catch be reserved

for later fishery openings. These provisions are intended to reserve more of the allowable harvest for the second and third season openings. NMFS is proposing to implement the Council recommended modifications to the Plan as shown in the proposed regulations in § 301.23(f)(1)(v) and (vi).

The Council also recommended several refinements to the Plan on the management of the incidental halibut harvest by salmon trollers. The Council recommended that the Plan be revised such that halibut landing restrictions for the commercial salmon troll fishery would be developed by the Council at its spring public meeting and would be based on the expected number of incidental harvest permits, halibut allocation, and other pertinent information, and may include landing ratios for any salmon species, landing limits (e.g., maximum number of halibut per landing), or other means to control the rate of halibut harvest. This change was requested by users because in 1995, the May/June salmon troll fishery harvested less than 13 percent of the incidental halibut allocation, in part because managers were unable to make an inseason ratio adjustment. The Council recommended that the Plan allow NMFS to make inseason changes to the landing restrictions after consulting with pertinent troll representatives of the Council's Salmon Advisory Subpanel and the Halibut Managers Group. Such inseason adjustments in landing restrictions should ensure that the incidental harvest rate is appropriate for salmon and halibut availability, does not encourage targeting halibut, and does not increase the likelihood of exceeding the allocation. Should the commercial salmon troll fishery fail to fully use its incidental halibut harvest allocation, any remaining halibut quota not harvested in the May/June troll fishery would be made available to the directed halibut fishery on July 1. The Council also recommended that if, by July 31, the overall non-Indian commercial halibut quota has not been completely harvested and sufficient incidental allocation remains from the May/June troll fishery, the incidental harvest of halibut will be allowed to resume on August 1 in any existing salmon troll fishery. The incidental harvest would continue until achievement of either the overall non-Indian commercial halibut quota or the incidental salmon troll halibut quota, whichever occurs first. NMFS is proposing to implement the Council's recommended changes to the Plan as shown in the proposed regulations in § 301.23(e)(1). Notice and effectiveness of the inseason adjustments would be made by NMFS in accordance with § 301.21(d)(3)(iii)and (iv).

The Council also recommended that applications to the IPHC by salmon trollers requesting an incidental halibut harvest permit must be postmarked no later than March 31, or the first weekday in April, if March 31 falls on a weekend. This deadline date change from the 1995 deadline of April 30 is proposed so that the Council will know how many incidental permits have been issued to salmon trollers prior to Council adoption of halibut landing restrictions within the salmon regulations. The Council will use the information on the number of applicants at its spring public meeting to determine appropriate landing restrictions for this fishery. The IPHC application deadline date for directed halibut fisheries will still be April 30. Because the IPHC is responsible for licensing vessels in the halibut fishery, this recommendation will be considered by the IPHC at its annual meeting for implementation in the international regulations in § 301.3.

Proposed Sport Fishery Regulations

In accordance with the Plan implementation procedures at 50 CFR 301.23(g), this document also provides notice of the proposed sport fishery regulations in § 301.21 that are necessary to implement the Plan in 1996. These proposed sport fishery regulations are based on an assumed Area 2A TAC of 520,000 lb (235.9 mt), the same as 1995. The final TAC will be determined by the IPHC at its annual meeting in January 1996, and necessary changes based on the final TAC and consideration of public comments will be made in the final rule. The proposed sport fishing regulations for 1996 by area are as follows.

Washington Inside Waters Subarea (Puget Sound and Straits). In this subarea, the proposed changes to the Plan leave the seasonal dates unspecified. However, for the purpose of soliciting public comments, the proposed rule is structured the same as 1995; i.e., the fishing season will be held 5 days a week, commencing May 25 with Tuesdays and Wednesdays closed to fishing. Based on the 1995 catch rate of 802 lb (363.8 kg) per day, a total of 43 fishing days will result in achievement of the quota for this subarea so the fishery would close on July 22. In 1995, this fishery closed on July 29 (after 48 days of fishing), but the quota was exceeded so the 1996 proposed regulations would only allow a 43-day season. The final determination of the days of the week that the season will be open will be based on the allowable harvest level and recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the allowable catch is set by the IPHC near the end of January.

Washington North Coast Subarea (north of the Queets River). The proposed season for this subarea is similar to 1995 with a May 1 opening and continuing 5 days per week until the quota is taken. Based on the assumed TAC for 1996 and the past performance of this fishery, the quota for this subarea would likely be reached by the end of May so a potential July reopening of the fishery as stated in the Plan in § 301.23(f)(1)(ii) is not possible (similar to 1995).

Washington South Coast Subarea. The proposed regulations in this subarea are similar to 1995 with a May 1 opening and continuing 7 days per week until the quota is taken. However, in accordance with the proposed changes to the Plan for this area, the fishery would close when 1,000 lb (0.45 mt) remain in the quota and reopen as a nearshore fishery until the remaining quota is taken.

Columbia River Subarea. The proposed regulations in this subarea will be the same as 1995.

Oregon Central Coast Subarea. The proposed regulations for this subarea reflect the proposed changes to the Plan and the Council recommendation for a three-season structure with the first season opening May 16 and continuing 3 days per week until 68 percent of the quota is taken, then switching to a nearshore water fishery until 7 percent of the quota has been taken or August 1, whichever is earlier. The third, unrestricted depth season would open on August 2 and continue until the overall Oregon sport quota is taken.

Oregon South Coast Subarea. The proposed regulations for this subarea reflect the proposed changes to the Plan and the Council's recommendation for a three-season structure with the first season opening May 16 and continuing 3 days per week until 80 percent of the quota is taken, then switching to a nearshore water fishery until the subarea quota taken or August 1, whichever is earlier. A third, unrestricted depth season would open on August 2 and continue until the overall Oregon sport quota is taken.

California Subarea. The proposed regulations in this subarea will be the same as 1995.

NMFS is requesting public comments on approval of the Council's recommended modifications to the Plan and to the sport fishing regulations at

§ 301.21. The IPHC Area 2A TAC will be set at the IPHC meeting to be held from January 22 through 25, 1996. Comments on these proposed regulations are requested by February 12, 1996, to provide adequate time after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on these proposed regulations. The IPHC, consistent with its responsibilities under the international convention, will implement the quotas stipulated in the Plan based on its final determination of the Area 2A TAC to be made at its annual meeting.

After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS and the IPHC will implement final rules for the halibut fishery. The final method for determining the incidental halibut harvest allocation for commercial salmon trollers will be published with the annual salmon management measures.

Classification

The proposed revisions to the Plan and regulations are not significant and fall within the scope of the 1995 Environmental Assessment/Regulatory Impact Review prepared by the Council, which also applies to this action. The Assistant General Counsel for Legislation and Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, regulatory flexibility analysis was not prepared.

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

List of Subjects in 50 CFR Part 301

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 22, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is proposed to be amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In § 301.3, paragraph (h) is revised to read as follows:

§ 301.3 Licensing vessels.

* * * * *

(h) A vessel operating in the directed commercial fishery for halibut in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than April 30. A vessel operating in the commercial salmon troll fishery in Area 2A that seeks an incidental harvest permit for halibut must have its application to the Commission postmarked no later than March 31, or the first weekday in April, if March 31 falls on a weekend.

* * * * *

3. In § 301.7, paragraph (c) is revised to read as follows:

§ 301.7 Fishing periods.

* * * * *

(c) Notwithstanding paragraph (b) of this section and § 301.10(g), an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Operators of vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the Federal Register. Halibut landing restrictions for the salmon troll fishery will be based on the expected number of incidental harvest permits, halibut allocation and other pertinent information, and may include landing ratios, landing limits, or other means to control the rate of halibut harvest. Inseason changes to the halibut landing restrictions will be announced in accordance with § 301.21(d)(3)(iii).

* * * * *

4. In § 301.21, paragraphs (d)(2)(i) through (d)(2)(vii) are revised to read as follows:

§ 301.21 Sport fishing for halibut.

* * * * *

(d) * * *

(2) * * *

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35'44'' N. lat., 124°43'00'' W. long.) to the buoy adjacent to Duntze Rock (48°24'55'' N. lat., 124°44'50'' W. long.) to Tatoosh Island lighthouse (48°23'30'' N. lat., 124°44'00'' W. long.) to Cape Flattery (48°22'55'' N. lat., 124°43'42'' W. long.), there is no quota. This area is managed by setting a season that is projected to result in a catch of 34,653 lb (15.7 mt).

(A) The fishing season is May 25 through July 22, 5 days a week (closed Tuesdays and Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31'42'' N. lat.), the quota for landings into ports in this area is 71,410 lb (32.4 mt). Landings into Neah Bay of halibut caught in this area will count against this quota and are governed by the regulations in this paragraph (d)(2)(ii).

(A) The fishing season commences on May 1, and continues 5 days a week (Tuesday through Saturday) until 71,410 lb (32.4 mt) are estimated to have been taken and the season is closed by the Commission.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18'00'' N. lat., 125°11'00'' W. long.; 48°18'00'' N. lat., 124°59'00'' W. long.; 48°04'00'' N. lat., 125°11'00'' W. long.; and, 48°04'00'' N. lat., 124°59'00'' W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10'' N. lat.), the quota for landings into ports in this area is 15,222 lb (6.9 mt).

(A) The fishing season commences on May 1 and continues every day until 1,000 lb (0.45 mt) are projected to remain in the subarea quota of 15,222 lb (6.9 mt). Immediately following the this closure, the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. will reopen for 7 days per week until either 15,222 lb (6.9 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area west of 124°40'00'' W. long. and north of 47°10'00'' N. lat. is closed to sport fishing for halibut.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46'00'' N. lat.), the quota for landings into ports in this area is 4,617 lb (2.1 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 4,617 lb (2.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01'08'' N.

lat.), the quota for landings into ports in this area is 94,694 lb (43 mt).

(A) The fishing seasons are:

(*1*) Commencing May 16, and continuing 3 days a week (Thursday through Saturday) until 64,392 lb (29.2 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(v)(A)(*1*) of this section, and continuing every day through August 1, in the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 6,629 lb (3.0 mt) or the subarea quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 2, and continuing 2 days a week (Friday and Saturday) through September 30, or until the combined quotas for the subareas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and the California border (42°00'00'' N. lat.), the quota for landings into ports in this area is 7,499 lb (3.4 mt).

(A) The fishing seasons are:

(*1*) Commencing May 16 and continuing 3 days a week (Thursday through Saturday) until 5,999 lb (2.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(vi)(A)(*1*) of this section, and continuing every day through August 1, in the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 1,500 lb (0.7 mt) or the area quota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 2 and continuing 2 days a week (Friday and Saturday) through September 30, or until the combined quotas for the subareas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

(vii) In the area off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 2,785 lb (1.3 mt).

(A) The fishing season will commence on May 1, and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 cm).

* * * * *

5. In § 301.23, paragraphs (e)(1), (e)(3) and (f)(1)(i), (f)(1)(iii),(f)(1)(v), and (f)(1)(vi) are revised to read as follows:

§ 301.23 Catch sharing plan for Area 2A.

* * * * *

(e) * * *

(1) *Incidental halibut catch in the salmon troll fishery*. Fifteen percent of the non-Indian commercial fishery allocation is allocated to the salmon troll fishery in Area 2A as an incidental catch during salmon fisheries. The quota for this incidental catch fishery is 3.1 percent of the Area 2A TAC.

(i) The Council will recommend landing restrictions at its spring public meeting each year to control the amount of halibut caught incidentally in the troll fishery. The landing restrictions will be based on the number of incidental harvest license applications submitted to the Commission, halibut catch rates, the amount of allocation, and other pertinent factors, and may include catch or landing ratios, landing limits, or other means to control the rate of halibut harvest. NMFS will publish the landing restrictions annually in the Federal Register, along with the salmon management measures.

(ii) Inseason adjustments. (A) NMFS may make inseason adjustments to the landing restrictions, if requested by the Council Chairman, as necessary to assure that the incidental harvest rate is appropriate for salmon and halibut availability, does not encourage target fishing on halibut, and does not increase the likelihood of exceeding the quota for this fishery. In determining whether to make such inseason adjustments, NMFS will consult with the applicable state representative(s) on the Halibut Managers Group, a representative of the Council's Salmon Advisory Sub-Panel, and Council staff.

(B) Notice and effectiveness of inseason adjustments will be made by NMFS in accordance with § 301.21(d)(3)(iii) and (iv).

(iii) If the quota for this fishery is not harvested during the May/June salmon troll fishery, the remaining quota will be made available by the Commission to the directed halibut fishery on July 1.

(iv) If the quota for the non-Indian commercial fisheries specified at paragraph (e) of this section has not been harvested by July 31 and the quota for the salmon troll fishery was not harvested during the May/June fishery, landings of halibut caught incidentally during salmon troll fisheries will be allowed effective August 1 and will continue until the quota for the troll fishery is taken or the overall non-Indian commercial quota is estimated to have been achieved by the Commission. Landing restrictions implemented for the May/June salmon troll fishery will apply to this reopening of the fishery.

(v) A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not in both.

* * * * *

(3) *Commercial license restrictions/ declarations*. Commercial fishers must choose either to operate in the directed commercial fishery in Area 2A, or to retain halibut caught incidentally during the salmon troll fishery. Commercial fishers operating in the directed halibut fishery must send their license application to the Commission postmarked no later than April 30 in order to obtain a license to fish for halibut in Area 2A. Commercial fishers operating in the salmon troll fishery who seek to retain incidentally caught halibut must send their application for a license to the Commission for the incidental catch of halibut in Area 2A postmarked no later than March 31, or the first weekday in April, if March 31 falls on a weekend. Fishing vessel operators who are issued licenses to fish commercially in Area 2A are prohibited from obtaining a Commission charterboat license for Area 2A. Sport fishing for halibut is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(f) * * *

(1) * * *

(i) *Washington inside waters subarea*. This sport fishery subarea is allocated 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. This subarea is defined as all U.S. waters east of the Bonilla-Tatoosh line, defined as follows:

From Bonilla Point (48°35'44'' N. lat., 124°43'00'' W. long.) to the buoy adjacent to Duntze Rock (48°24'55'' N. lat., 124°44'50'' W. long.) to Tatoosh Island lighthouse (48°23'30'' N. lat., 124°44'00'' W. long.) to Cape Flattery (48°22'55'' N. lat., 124°43'42'' W. long.), including Puget Sound. The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the quota. No inseason adjustments will be made, and estimates of actual catch will be made postseason. The fishery will open in May and continue at least through July 4, or until a date established preseason (and published in the sport fishery regulations) when the quota is predicted to be taken, or until September 30, whichever is earlier. The Washington Department of Fish and Wildlife will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the opening date and weekly structure of the fishery each year. The daily bag limit is one fish per person, with no size limit.

* * * * *

(iii) *Washington south coast subarea*. This sport fishery subarea is allocated 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. This subarea is defined as waters south of the Queets River (47°31'42'' N. lat.) and north of Leadbetter Point (46°38'10'' N. lat.). The structuring objective for this subarea is to maximize the season length, while providing for a limited halibut fishery. The fishery opens on May 1, for 7 days per week and continues until 1,000 lb (.45 mt) are projected to remain in the subarea quota. Immediately following this closure, the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. will reopen for 7 days per week until either the subarea quota is estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area south of the Queets River (47°31'42'' N. lat.), west of 124°40'00'' W. long. and north of 47°10'00'' N. lat.

* * * * *

(v) *Oregon central coast subarea*. If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08'' N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this sport fishery subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide one or two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in nearshore waters for small boat anglers. Any poundage remaining in this subarea quota from earlier seasons will be added to the last season in this subarea. This subarea has three seasons as set out in paragraphs (f)(1)(v)(A) through (C) of this section. The Council will recommend opening dates for these seasons annually at its fall public meeting. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3 cm) size limit and the second with a minimum 50–inch (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) until 68 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30–fathom (55 m) curve, and continues every day until 7 percent of the subarea quota is taken, or until early August, whichever is earlier.

(C) The last season begins in early August, with no depth restrictions, and continues at least 2 days per week, until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vi) *Oregon south coast subarea*. If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01'08'' N. lat.) to the California border (42°00'00'' N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central sport fishery subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. This subarea has three seasons as set out in paragraphs (f)(1)(vi)(A) through (C) of this section. The Council will recommend opening dates for these seasons annually at its fall public meeting. The daily bag limit for all seasons is two halibut per person, one with a minimum 32–inch (81.3 cm) size limit and the second with a minimum 50–inch (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins in May and continues at least 3 days per week (dependent on TAC) and continues at least 3 days per week until 80 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30–fathom (55 m) curve, and continues every day until the subarea quota is estimated to have been taken, or early August, whichever is earlier.

(C) The last season begins in early August, with no depth restrictions, and continues at least 3 days per week, until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

* * * * *

[FR Doc. 96–1483 Filed 1–24–96; 2:02 pm]
BILLING CODE 3510–22–F

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50 CFR Parts 611 and 655

[Docket No. 951208293–5293–01; I.D. 110995B]

RIN 0648–AF01

Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 5; Correction

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

ACTION: Correction to proposed regulation.

SUMMARY: This document contains corrections to proposed regulation (I.D. 110995B), which was published Wednesday, December 20, 1995 (60 FR 65618). The proposed regulation would implement Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP).

DATES: Comments on the proposed rule must be received on or before January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the proposed rule to implement Amendment 5 to the FMP, the portion of the ''Classification'' section containing response time for collection-of-information requirements inadvertently did not contain the estimated time it would take for vessel owners to address logbook requirements.

Correction of Publication

Accordingly, the publication on December 20, 1995, of the proposed rule (I.D. 110995B) for Amendment 5, which was the subject of FR Doc. 95–30821, is corrected as follows:

On page 65621, under the Classification section, in the third column the first complete paragraph, the last sentence is corrected to read: ''The response times for these requirements is estimated to be: 30 minutes per response for vessel permits and vessel permit appeals; 1 hour per response for operator permits; 5 minutes per response for dealer permits; 5 minutes per response for vessel logbooks; and 2 minutes per response for the observer notification requirement.''

Dated: January 23, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–1482 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 19
Monday, January 29, 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. 95–067–2]

Northrup King Co.; Availability of Determination of Nonregulated Status for Corn Line Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a corn line developed by the Northrup King Company designated as Bt11 that has been genetically engineered for insect resistance is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Northrup King Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Northrup King Company's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: January 18, 1996.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition 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 those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 95–195–01p) from the Northrup King Company (Northrup King) of Golden Valley, MN, seeking a determination that a corn line designated as Bt11 that has been genetically engineered for resistance to the European corn borer (ECB) does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On September 7, 1995, APHIS published a notice in the Federal Register (60 FR 46573–46574, Docket No. 95–067–1) announcing that the Northrup King petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the subject corn line posed a plant pest risk. The comments were to have been received by APHIS on or before November 6, 1995.

APHIS received a total of 106 comments on the subject petition during the designated 60-day comment period from seed companies, individuals, farmers and farm seed dealers, agricultural products companies, State departments of agriculture, an agricultural council, a growers association, and a university. All of the comments were favorable to the petition.

Analysis

Corn line Bt11 has been genetically engineered to contain the *cryIA(b)* gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk), which expresses a delta-endotoxin insecticidal protein known to be effective against certain lepidopteran insects, including ECB. Corn line Bt11 also contains the *pat* gene isolated from *Streptomyces viridochromogenes* that encodes a selectable marker, the phosphinothricin-N-acetyltransferase (PAT) enzyme. When introduced into the plant cell, the PAT enzyme can inactivate glufosinate herbicides. Expression of the introduced genes is controlled by the 35S promoter derived from the plant pathogen cauliflower mosaic virus and a NOS terminator derived from the nopaline synthase gene of *Agrobacterium tumefaciens*.

Corn line Bt11 has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains regulatory gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of the subject corn line conducted under APHIS permits or notifications since 1992 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Northrup King and a review of other scientific data, comments received, and field tests of the subject corn line, APHIS has determined that corn line Bt11: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) should not cause damage to raw or processed agricultural commodities; (5) will not harm other organisms, including agriculturally beneficial organisms and threatened and endangered species; and (6) should not reduce the ability to control insects in corn and other crops. Therefore, APHIS has concluded that corn line Bt11 and any progeny derived from hybrid crosses with other nontransformed corn varieties will be just as safe to grow as traditionally bred corn lines that are not regulated under 7 CFR part 340.

The effect of this determination is that a corn line designated as Bt11 is no longer considered a regulated article

under APHIS' regulations in 7 CFR part 340. Therefore, the notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of corn line Bt11 or its progeny. However, the importation of the subject corn line or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that corn line Bt11 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 22nd day of January 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–1507 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–34–P

Farm Service Agency

National Conservation Review Group; Meeting

AGENCY: Farm Service Agency.

ACTION: Notice of meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program (ACP), the Conservation Reserve Program (CRP), and the Emergency Conservation Program (ECP). Comments and suggestions will be received prior to the NCRG meeting concerning the ACP, CRP, and ECP administered by the Farm Service Agency (FSA).

DATES: The meeting is scheduled for February 29, 1996.

ADDRESSES: The meeting will be held at United States Department of Agriculture (USDA), South Building, room 5066, at 14th and Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheryl Zavodny, FSA, USDA, P.O. Box 2415, room 4768, South Building, Washington, DC, 20013–2415, telephone 202–720–7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting will be held from 9 a.m. to 3 p.m. on February 29, 1996, at the USDA South Building, room 5066, 14th and Independence Avenue, SW, Washington, DC. Meeting sessions will be open to the public.

The agenda will include consideration of State and County Conservation Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, CRP, and ECP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by FSA.

Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals or groups interested in making recommendations may also make them in writing and submit them by February 15, 1996, to Cheryl Zavodny, FSA, USDA, P.O. Box 2415, room 4768–S, Washington, DC 20013–2415. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of limited space, persons desiring to attend the meeting should call Cheryl Zavodny at 202–720–7333 to make reservations.

Signed at Washington, DC, on January 22, 1996.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 96–1480 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–05–P

Food Safety and Inspection Service

[Docket No. 95–053N]

Nutritional Labeling/Safe Handling Information Study, Raw Meat and Poultry; Availability

AGENCY: Food and Safety and Inspection Service, USDA.

ACTION: Notice of availability of report.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the report, ''Nutritional Labeling/Safe Handling Information Study, Raw Meat and Poultry.'' This report summarizes survey data on actions taken by food retailers to provide consumers with nutrition information and safe handling instructions on raw meat and poultry products.

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written comments and requests for single copies of the report to: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Docket #95–053N. Send a self-addressed, adhesive mailing label to assist the office in processing requests for copies.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On January 6, 1993, FSIS published a final rule, ''Nutrition Labeling of Meat and Poultry Products,'' (58 FR 632) that, in part, established a voluntary nutrition labeling program for single-ingredient, raw meat and poultry products.

To determine if significant numbers of food retailers were participating in the voluntary nutrition labeling program and were providing nutrition labeling for single-ingredient, raw meat and poultry products, FSIS contracted with National Retail Tracking Index, Inc. (NRTI) to collect this data. The survey showed that of the nearly 2,000 grocery stores surveyed nationwide, 66.5 percent were providing nutrition information in accordance with the voluntary nutrition labeling program guidelines. When the results are weighted by the stores' annual sales volumes, the participation level rose to 72.2 percent, comfortably exceeding the target goal of 60 percent.

FSIS will continue to assess retailer participation in the program every two years. If significant participation by food retailers exists, that is, at least 60 percent of all stores that are evaluated are participating in accordance with the guidelines, the voluntary nutrition labeling program will remain in effect.

On March 28, 1994 (59 FR 14528), FSIS made safety handling instructions mandatory on the labels of all raw meat

and poultry products. The safe handling instructions include a rationale statement and address the safe storage of raw product, prevention of cross contamination, cooking of raw product, and handling of leftovers.

To determine retailer compliance with this new mandatory rule, FSIS expanded the scope of the nutritional labeling study to include an estimate on the prevalence of stores that are providing safe handling instructions for raw meat and poultry items packaged at the retail level. Specifically, the rule requires that each store have the appropriate safe handling label affixed to all packages of raw meat and poultry products that it sells. NRTI found that 92.2 percent of the surveyed stores had safe handling instructions present on every package of every item. FSIS intends to follow up with retail trade associations and retailers to increase awareness that safe handling labeling at the store level is mandatory and to advise that these products are misbranded in the absence of such labeling.

Done at Washington, DC, on January 22, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–1481 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, February 15, 1996. The meeting will be in the Old Resources Conference Room, at USDA Forest Service; Siuslaw National Forest; 4077 Research Way; Corvallis, Oregon; phone (541) 750–7000; located in the Siuslaw NF Supervisor's Office. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 4:00 p.m. Topics tentatively scheduled on the agenda include: (1) Forest Health Proposal from the Klamath Province, (2) Province Timber Sale Monitoring, (3) Province committee appointments, (4) Use of Federal Funds for habitat restoration on private lands, (5) Group information sharing.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during a public forum. The public forum will follow the agenda topics mentioned above and will occur in the afternoon. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon; 541–465–6924.

Dated: January 22, 1996.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 96–1515 Filed 1–26–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of State Tax Collections

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1996.

ADDRESSES: Direct all written comments to Margaret Woody, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Henry S. Wulf, Bureau of the Census, Governments Division, Washington, DC 20233–6800, (301)-457–1523.

SUPPLEMENTARY INFORMATION

I. Abstract

State tax collection data are a key component of the national income accounts maintained by the Department of Commerce, are used in long established Census Bureau reports in the government finance series, and provide important information to officials and researchers in the analysis of state government finances. We mail this survey to each state and the District of Columbia.

II. Method of Collection

Canvass methodology consists of a questionnaire mailout/mail-back. Responses will be screened manually, then entered on a microcomputer.

III. Data

OMB Number: 0607–0046.

Form Numbers: F–5, F–5A, F–5L1, F–5–L2.

Type of Review: Regular.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 79.

Estimated Time Per Response: 1.38 hours.

Estimated Total Annual Burden Hours: 109 hours.

Estimated Total Annual Cost: The estimated cost to the respondents is $1,640.45. The estimated cost to the Federal government is contained in the Surveys of Government Finance. In total, these cost about $3 million during FY 1996.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 23, 1996.

Margaret L. Woody,

Office of Management and Organization.

[FR Doc. 96–1493 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory

Committee will be held February 20, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of public papers or comments.
3. Review of status of New Forum negotiations.
4. Report on status of Export Administration Regulations (EAR) reform and changes that impact aerospace industry.
5. Update on status of interagency satellite and gas turbine engine jurisdiction discussions.
6. Report on licensing issues that impact support of U.S. origin systems.
7. Update on status of Missile Technology Control Regime.
8. Review of Executive Order for the Administration of Export Controls.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: January 23, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–1449 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–405–802]

Certain Cut-To-Length Carbon Steel Plate From Finland: Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On July 18, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Finland. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), February 4, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1995, the Department published in the Federal Register (60 FR 36776) the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Finland (58 FR 44165, August 19, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

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

Scope of This Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is February 4, 1993, through July 31, 1994. This review covers entries

of certain cut-to-length carbon steel plate by Rautaruukki Oy (Rautaruukki).

Consumption Tax Methodology

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

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

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

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

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Rautaruukki (the respondent) and petitioners. Petitioners requested a public hearing but subsequently withdrew their request for a hearing. Therefore, no hearing was held.

Comment 1: Petitioners argue that best information available (BIA) must be used for Finnsteel's costs. According to petitioners, Rautaruukki admitted that Finnsteel, its U.S. selling subsidiary, was involved in the U.S. sales of subject merchandise. Petitioners claim that nonetheless Rautaruukki failed to report any of Finnsteel's costs on sales of subject merchandise. Although Rautaruukki subsequently claimed that Finnsteel is not actively involved in the sales to the U.S. of the subject merchandise, petitioners note Rautaruukki could not substantiate its claim at verification. Petitioners argue that the Department failed to include Finnsteel's costs in calculating the preliminary results. Petitioners contend that expenses were incurred by Finnsteel as a direct result of specific sales. Finnsteel would not perform such activities absent specific sales of subject merchandise. Petitioners argue that the expenses could have been tied to specific sales—if Rautaruukki and Finnsteel had kept adequate records. Rautaruukki should have separated and reported Finnsteel's direct expenses for these services. Since it failed to do so, the Department cannot determine which of Finnsteel's costs are direct. Since at least some of Finnsteel's costs were direct selling expenses, the Department must assign BIA to those unreported expenses. The Department should follow its standard practice and assume all of Finnsteel's expenses were direct expenses. Since Finnsteel's selling expenses were either not reported or not reported separately, the Department should use the reported indirect selling expense as BIA for direct selling expenses.

Respondent counters that there is no evidence on the record that Finnsteel is actively involved in the sales of the subject merchandise in this administrative review. Rautaruukki explained in its response that its U.S. sales during the POR were made directly from Rautaruukki's Raahe Steel Works to the unrelated customer. Respondent notes the verification report states that Rautaruukki reported that it handled all of the transactions and all activity related to the sale of subject merchandise from Finland. Respondent also notes that the Department also found that all documentation examined at verification only listed Rautaruukki and the U.S. customer. Also, the unrelated U.S. customer submitted a sworn affidavit confirming that it purchased the subject merchandise directly from Rautaruukki during the POR. Respondent notes that although Finnsteel acted as a ''communications link'' for sales of subject merchandise during the POR, Finnsteel's role did not rise to the level of active participation in the sales process to warrant treating the U.S. sales as exporter's sales price (ESP) transactions. Respondent argues that the record in this administrative review clearly demonstrates that Finnsteel acted only as a communications link with the unrelated customer. Therefore, the U.S. sales in this administrative review were purchase price, and no further adjustment is warranted.

Department's Position: We agree with respondent. Respondent reported that normally transactions are handled through Finnsteel; however, sales of subject merchandise made to the U.S. during the POR were exclusively handled by Rautaruukki. At verification, we found no evidence of Finnsteel's involvement in the sales of subject merchandise during the POR. All documents examined supported the conclusion that Finnsteel did not participate in these transactions. Sales were made directly from Rautaruukki to the U.S. customer. Because of the lack of evidence of Finnsteel's involvement, we cannot assume Finnsteel incurred costs on the sales of subject merchandise to the United States during the POR. Therefore, the Department is

not making a sales adjustment for Finnsteel's costs in these final results.

Comment 2: Petitioners argue that the Department must correct two errors in the margin calculation program. Due to one of the errors, the Department's sales below cost test for the preliminary results used a cost of manufacture (COM) that was only a fraction of the true COM. One line read ''TOTCOM2 = FOREX = TOTCOM1'', while it should have read ''TOTCOM2 = FOREX + TOTCOM1''. The second error occurred in the calculation of home market selling expenses for use in cost (SELLCOP). Petitioners contend the Department failed to include certain expenses, which were reported in the other expense field, in the calculation of SELLCOP.

Respondent argues that the Department's margin calculation program is correct. The Department gave interested parties a chance to comment on the proposed programming language in October 1994. Petitioners submitted comments in that same month. The petitioners' attempt to present new comments regarding the Department's computer programming language is untimely and should be rejected on that basis. Moreover, the Department's margin calculation program is correct and needs no adjustments.

Department's Position: We agree with the petitioners. The programming language that was released for comments in October 1994 was preliminary and was not company specific. Both of the errors that the petitioners have claimed are related to company specific programming. In these final results, we have changed the program to read ''TOTCOM2 = FOREX + TOTCOM1''. This error resulted in incorrect cost test results. However, the Department's May 18, 1995, analysis memo and the Federal Register notice of the preliminary results in this administrative review did not reflect the incorrect cost results. After correcting the errors, the Department did in fact find sales below cost for Rautaruukki in this administrative review. Therefore, the discussion of sales below cost found in the preliminary notice and the May 18, 1995 analysis memo is consistent with the corrected, final cost test results. Finally, while we have not allowed a direct sales adjustment for the other expense field as discussed in the preliminary results, we have included this other expense field in the calculation of SELLCOP for these final results because these are costs incurred.

Comment 3: Petitioners argue that Rautaruukki incorrectly reported its general and administrative expenses (G&A). The Department has a long-standing practice of requiring G&A expenses to be reported as a percentage of cost of sales. Also, the G&A factor is normally calculated using G&A recorded in the company's audited financial statements for the year that most closely corresponds to the POR (see Furfuryl Alcohol from Thailand, 60 FR 22557, 22560–61 (May 8, 1995)). Petitioners argue that Rautaruukki did not use the regular methodology accepted by the Department. It based G&A on 1993 data and data from eight months of 1994, and it calculated a per ton G&A amount. Petitioners maintain this is erroneous in two respects. First, it did not use data from the audited financial statements (the 1994 data was from an interim financial statement which was not audited). The 1994 data constitutes the type of part-year data the Department does not use because G&A expenses are incurred sporadically throughout the fiscal year or are based on estimates that are adjusted to actual at year-end. Second, the calculation is a per ton G&A amount, rather than a factor that is a percentage of cost, as required by the questionnaire and Department practice. The Department should recalculate the G&A expense using Rautaruukki's 1993 audited financial statements and other verified 1993 information.

Respondent argues that it correctly reported G&A expenses and that the cost verification report states that the Department verified all appropriate expenses for Raahe were included in G&A and that the appropriate methodologies were applied. Furthermore, respondent claims the Department found no discrepancies between the Group profit and loss report and the reported consolidated financial statements. Respondent notes in support of its argument for using an annual G&A factor, petitioners reference cases which are antidumping investigations and not administrative reviews. Respondent contends that petitioners reliance on these investigations is misplaced when applied to this administrative review. In an investigation where sales span a six-month period, the Department generally looks to a full-year period in computing G&A, because such a period encompasses operating results over a longer time span than the period of investigation and typically reports the results of at least one business cycle. In this administrative review, the POR covers an eighteen month period, and Rautaruukki provided annual and interim financial reports which are prepared in the ordinary course of business. Respondent claims these reports cover the entirety of the POR; therefore, they represent the most complete and accurate information available, and they exceed the standard of Furfuryl Alcohol from Thailand.

Department's Position: We agree with petitioners. It is our standard practice to base G&A on an amount derived from annual audited financial statements and to calculate it as a percentage of cost rather than a per ton amount. See Final Determination of LTFV: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Canada, 58 FR 37099 (July 9, 1993)(Comment #43). The fact that this is an administrative review, rather than an investigation, has no relevance. The 1994 data used by Rautaruukki is still partial year data based on unaudited financial statements. We do not use partial year data because G&A expenses are often incurred sporadically throughout the year and are often accrued based on estimates until they are adjusted to actual at year-end. It is also our standard practice to calculate G&A based on a percentage of cost, rather than a per ton amount because G&A expenses are more closely associated with costs than with weight. Id. Therefore, we have recalculated G&A for Rautaruukki as a percentage of cost using only 1993 data from Rautaruukki's audited financial statements. Regarding Rautaruukki's argument that the Department verified their G&A expense, the Department's verification confirmed that all appropriate expenses were included in the reported G&A. The verification report statements that the allocation methodology was verified only indicated that the figures and methodology reported by Rautaruukki accurately traced to their books and records. This allocation methodology is not that traditionally utilized by the Department in allocating G&A.

Comment 4: Petitioners argue that the interest expense factor was calculated using the same methodology used for the G&A factor, and thus suffers from the same flaws as the G&A factor. Additionally the unaudited 1994 amount used in the interest expense calculation suffers from an additional flaw—it is incorrect because Rautaruukki erroneously deducted short-term interest that it paid. Instead, petitioners argue the Department should take Rautaruukki's 1993 consolidated interest expense less dividend income, divided by total cost of goods sold less selling expenses. Petitioners claim this is a conservative interest expense factor highly favorable to Rautaruukki because it assumes all interest income is short-

term, which the Department did not verify, and only Rautaruukki's G&A (rather than consolidated G&A, which is not on the record) is deducted, which results in a larger denominator and thus a lower factor.

Respondent argues that it correctly reported its interest expenses. For the reasons stated in Comment three above, Rautaruukki correctly reported its interest expenses by providing the Department with the most complete and accurate information available. Additionally, petitioners' interest expense factor calculation is flawed. The net financial expense figure is grossly overstated because petitioners' figure includes currency exchange differences as interest expenses.

Department's Position: We agree with petitioners in part. As with G&A expenses, it is our standard practice to base interest expense on an amount derived from audited consolidated annual financial statements and to calculate interest expense as a percentage of cost See e.g. Preliminary Determination of Sales at LTFV: Grain-Oriented Electrical Steel from Italy, 59 FR 5991 (1994). Furthermore, the choice of allocation methodologies is left to the Department's discretion. See PPG Industries v. United States 746 F. Supp. 119 (CIT 1990). The 1994 data used by Rautaruukki is partial year data based on unaudited financial statements. Therefore, we have recalculated interest expense for Rautaruukki using only 1993 data.

We also agree with respondent in part that the petitioners' figure is overstated because it contains currency exchange differences as interest expense. To calculate interest expense for the final results, we have used the interest expense examined at verification, which is based on the consolidated financial statements, divided by consolidated cost of sales taken directly from the consolidated financial statements in the annual report.

Comment 5: Respondent argues that the Department erred in collapsing home market control numbers (CONNUMHs) IO6X and TA6X and thereby made incorrect product matches. The questionnaire established a hierarchy of product characteristics that the Department would use in identifying individual plate products. Each unique combination of these characteristics is treated as a distinct product. The Department discovered instances where multiple control numbers were being assigned to the same set of product characteristics. The Department collapsed CONNUMHs IO6X and TA6X, which it understood had identical product characteristics. These were matched to the U.S. sales of CONNUMU IO6X. In doing so, the Department mistakenly matched sales of beveled plate to sales of plate which had not undergone the further manufacturing process required to produce beveled plate. In terms of quality, the two product control numbers are identical. CONNUMs starting with IO through LL represent basic cut-to-length plates which are not painted, and CONNUMs starting with RA through UX represent plates with a beveled edge. Beveled plate is produced only after an additional manufacturing process, which is performed on a separate production line. It incurs additional costs which must be taken into consideration in Rautaruukki's pricing decisions. These additional costs are reflected in Rautaruukki's home market database. In collapsing these control numbers, respondent argues the Department incorrectly collapsed two products with different product characteristics. In so doing, respondent claims the Department incorrectly compared sales of beveled plate in the home market with sales of normal plate in the U.S. market.

Petitioners counter that the Department correctly collapsed CONNUMHs IO6X and TA6X. Nowhere in its brief does Rautaruukki identify the product characteristics which it believes are different for the two CONNUMHs. This is because there are no product characteristics that are different. According to petitioners a review of the products in IO6X and TA6X shows that they are identical for the eight physical characteristics identified by the questionnaire. By separating the products in CONNUMHs IO6X and TA6X, Rautaruukki introduced into a primary place in the hierarchy a product characteristic—beveling—that was not selected by the Department. Petitioners argue such unilateral modification of the Department's hierarchy should not be permitted. When the Department gave interested parties an opportunity to comment on the model match hierarchy in August 1994, Rautaruukki submitted comments. Those comments did not contain a single reference to beveling. In fact, no interested parties identified beveling as a physical characteristic that ought to be included in the plate hierarchy. Petitioners contend Rautaruukki had ample opportunity to suggest any modifications it believed to be necessary and suggest Rautaruukki simply ignored the Department's hierarchy and created its own. In doing so, petitioners argue Rautaruukki attempted to usurp the Department's statutory duty to determine what constitutes identical merchandise.

Department's Position: We agree with petitioners. On August 12, 1994, the Department solicited comments on the proposed model matching criteria. On August 26, 1994, Rautaruukki filed comments. However, Rautaruukki's comments did not propose beveling as a relevant characteristic to use in product matching. Furthermore, in its questionnaire response and supplemental response Rautaruukki failed to establish the relevance of beveling as a product matching criteria. Therefore, the Department has no basis upon which to differentiate beveled plate from non-beveled plate for matching and price comparison purposes. The Department has broad discretion to devise the methodology for determining the model match methodology as confirmed by the Courts in *Torrington Co.* v. *United States*, 881 F. Supp. 622, 635 (CIT 1995) and *Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984). Furthermore, beveled plate does not possess physical characteristics which make it unique from non-beveled plate with regard to applications and uses. We have therefore continued to collapse IO6X and TA6X.

Comment 6: Respondent argues the Department should compare U.S. sales to a trading company to home market sales to end-users. In its preliminary results, the Department reclassified the levels of trade in the home market database by collapsing sales to and sales through wholesalers into a single lot. It matched this collapsed level of trade with the level of trade reported in the U.S. market (sales to a trading company). Respondent claims the Department should have compared U.S. sales to home market sales to end-users for the following reasons: Rautaruukki has a closer relationship with the wholesalers/distributors in the home market; the home market wholesalers/distributors have a common inventory system whereas for U.S. sales, Rautaruukki does not know the ultimate customer in the United States, and therefore no common inventory system can exist; the home market wholesalers/distributors hold and fill orders from inventory unlike either the U.S. customer or the home market end-user; home market wholesalers/distributors are eligible for certain rebates, for which the U.S. customer and home market end-users are not; respondent argues the sales verification report states that since there is no inventory for purchase price sales to the U.S., the customer level of trade for the two markets should be

different; since respondent claims it does not know the ultimate customer, it considers its U.S. customer as an end-user; and plate with identical CONNUMs were sold both to the U.S. customer and to end-users in the home market.

The respondent further argues that in an antidumping investigation, the Department normally calculates foreign market value (FMV) and U.S. price (USP) based on the same commercial level of trade. The Department normally asks if the levels of trade reported by the respondent are in fact distinct and discernable, based on the respondent's explanation of their functions. Respondent notes that while the Department often matches according to customer type (see Stainless Steel Hollow Products from Sweden, 58 FR 69,332), this is not always the case (see Antifriction Bearings from France, 58 FR 39,768). In the instant case, the respondent argues that the U.S. customer is the functional equivalent to an end-user in the home market because: (1) Rautaruukki does not know the ultimate customer in the U.S. market; (2) the same product is sold to home market end-users and to the U.S. customer; (3) neither the home market end-users nor the U.S. customer qualify for the rebate; and (4) the home market end-users and the U.S. customer do not hold inventory or share a common inventory system. In Stainless Steel Bar from Spain (59 FR 66931), the Department accepted level of trade classifications based upon when the customer wanted delivery. These were distinguished by which party bore the costs and risks of maintaining a finished goods inventory. In the instant administrative review, respondent argues that sales to the United States should be compared with sales to home market end-users because, unlike wholesales/distributors in the home market, neither bears the cost of maintaining inventory.

Petitioners argue that Rautaruukki's complaints are without merit. The criteria for determining level of trade comparability are the extent to which the customers: (1) perform equivalent functions in their respective markets, and/or (2) are positioned in equivalent positions in the chain of distribution from the manufacturer to the ultimate customer (see Disposable Pocket Lighters from Thailand, 60 FR 14263, 14264 (March 16, 1995)). By these criteria, petitioners maintain there is clearly a close correspondence between the U.S. trading company and the home market wholesalers/distributors—both are Rautaruukki's first unrelated customer in a particular market, and both sell directly to the ultimate customer. In both cases, petitioners note that Rautaruukki invoices the distributor, which then in turn separately invoices its own customer (the end-user). The nearly congruent function and position of the U.S. trading company and the home market wholesalers/distributors are illustrated in Rautaruukki's own distribution channel flow charts for the two markets. They are virtually carbon copies of each other, and at one point, the U.S. trading company is referred to as a distributor. Given the verified facts, petitioners maintain the Department was correct in its decision, which was in accordance with its long-standing practice and regulations that require the FMV/USP comparisons to be made at the same or most comparable level of trade.

Petitioners further argue that it is the respondent's burden to show there are discernable functions that would make its proposed matching level a better choice than the Department's choice. Of the four points raised by the respondent in making their argument, the first three do not relate in any way to the functions performed by the buyer and, therefore are irrelevant to the determination of level of trade. The fact that Rautaruukki does not know its distributor's end-user customers in the United States says nothing about the distributor's functions, or those of home market end-users. Even if the point were relevant, Rautaruukki also does not know the end-user purchaser on many of its sales to home market distributors. There is no precedent for the payment of rebates being relevant to the functions of a customer or its position in the chain of distribution. The fact that plate with the same CONNUMs was sold to both the U.S. customer and to end-users in the home market is in no way indicative of the functions performed by any customer. Moreover, sales of identical merchandise were also made to distributors in the home market.

Petitioners continue that this reduces Rautaruukki's argument to the claim that home market end-users and the U.S. customer do not hold inventory or share a common inventory system. Even if true, this claim alone would not be a basis to reverse the Department's decision. In any event, the facts on the record do not support Rautaruukki's assertion that the U.S. buyer does not hold inventory. There is no reason for the Department to reverse its decision.

Department's Position: We agree with the petitioners. The Department's practice in finding similar levels of trade in each market requires a comparison of customers in each of the markets to determine whether they perform equivalent functions in their respective markets, and/or are in equivalent positions in the chain of distribution from the manufacturer to the ultimate customer. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Review, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900, 10940–41 (February 28, 1995) (Issue 9, Comment 3). For Rautaruukki, the U.S. trading company and the home market wholesalers/distributors function at similar levels of trade. They are the first unrelated customer and both sell directly to the ultimate customer. For both markets, Rautaruukki's distributor invoices the end-user, while Rautaruukki invoices the distributor. The respondent did not demonstrate any functions, which differentiate the level of trade for wholesalers/distributors in the home market and the trading company in the U.S., to illustrate an alternate level of trade is necessary. The first three factors cited by the respondent are not elements normally considered by the Department in determining level of trade. Nor does the respondent provide any compelling reason why the Department should consider those factors in this instance. The respondent's first issue, that Rautaruukki does not know the U.S. trading company's end-user customers, does not illustrate the functions of the U.S. trading company or the home market end-users. In fact, Rautaruukki also claims it does not know the end-user purchasers on many of its sales to home market distributors yet Rautaruukki argues that these sales would be at a different level of trade. With regard to the third point, the Department does not consider either rebates or the fact that the same products are sold to home market end-users and to the U.S. customer as relevant to the functions of a customer or its position in the chain of distribution. As for the fourth point, while the U.S. customer may not have a common inventory system, there is nothing on the record to indicate that the U.S. customer does not hold any inventory. Therefore, we are continuing to match U.S. sales to the trading company with home market sales to/through wholesalers/distributors.

Comment 7: The respondent argues that it correctly reported rebates which were successfully verified by the Department. However, in the preliminary results, the Department denied Rautaruukki's reported rebate to

certain home market wholesalers/distributors because Rautaruukki's computer tape reported these rebates to a different number of home market wholesalers/distributors than were identified in the narrative response. Respondent argues that part of this discrepancy is explained by the fact that certain companies merged. Respondent also argues that although certain home market wholesalers/distributors were not specifically identified in the narrative response, Rautaruukki did submit the relevant information in the home market sales database. Accordingly respondent argues the Department should allow the adjustment.

The petitioners argue that the denial of these rebates was correct. Petitioners note that the Department verified the number of companies that received this rebate as reported in the narrative response, not as reported in the home market sales tape. Accordingly, petitioners maintain Rautaruukki's argument adds nothing new to this issue—their brief cites to no evidence on the record that one of the companies received the rebate, and Rautaruukki admits that it never specifically identified another company in its narrative response. Therefore, petitioners argue the Department should continue to exclude the rebate amounts on sales to certain companies in the final results.

Department's Position: We agree with respondent that the Department should allow all rebates. Although Rautaruukki did not specifically address all rebates in its narrative, they did report all the rebates in their database. After further examination of the verification exhibits, we have determined that all rebates were accurately reported and verified by the Department and that all these parties did receive the rebates as reported.

Final Results of Review

As a result of our review, we have determined that no margin exists for Rautaruukki Oy for the period February 4, 1993, through July 31, 1994.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Finland entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 32.25 percent. This is the ''all others'' rate from the LTFV investigation. See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from Finland, 58 FR 37122 (July 9, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

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

Dated: January 19, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–1456 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–401]

Certain Textile Mill Products From Thailand; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of the Countervailing Duty Administrative Review on Certain Yarn Products covered under the Suspended Investigation on Certain Textile Mill Products from Thailand.

SUMMARY: On August 2, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of Certain Yarn Products covered under the agreement suspending the countervailing duty investigation on Certain Textile Mill Products from Thailand for the period May 18, 1992 through December 31, 1993 (suspension agreement). We have completed this review and have determined that the signatories were not in violation of the suspension agreement. However, we note that the Department will require that four signatories repay the Royal Thai Government (RTG), in an annual adjustment, the amount by which all tax certificates received exceeded the import duties on physically incorporated inputs.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Yarbrough or Jim Doyle, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department published in the Federal Register (55 FR 48885) a notice terminating in part the suspension agreement on Certain Textile Mill Products from Thailand (50 FR 9837, March 12, 1985). On May 9, 1992, the Court of International Trade (CIT) held that the Department's termination was not in accordance with the law because the Department failed to strictly follow 19 CFR 355.25(d)(4). The Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the CIT on October 12, 1993, and instructed the Department to reinstate the suspension agreement. Subsequently, on October 22, 1993, the Department reinstated the suspension agreement, effective May 18,

1992, the date the Department published notice of the CIT decision (58 FR 54552).

On March 4, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (59 FR 10368) of the suspended investigation for the period May 18, 1992 to December 31, 1993. The Department received requests for an administrative review of certain yarn products on March 31, 1994, from the American Yarn Spinners Association (AYSA) and certain individual yarn producers. On April 15, 1994, the Department initiated a countervailing duty administrative review on Certain Yarn Products for the period May 18, 1992 to December 31, 1993 (59 FR 18099, April 15, 1994). The Department verified the responses of the RTG and the Thai Textile Manufacturers Association (TTMA) from January 16 through January 25, 1995 pursuant to the administrative review.

On August 2, 1995, the Department published in the Federal Register (60 FR 39363) the preliminary results of its administrative review of certain yarn products. We invited interested parties to comment on the preliminary results. On August 14, 1995, a case brief was submitted by Economic Consulting Services (ECS), a representative for the AYSA and individual member companies of the AYSA.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The review covers nine programs and eight producers/exporters: Saha Union, Venus Thread, Union Thread, Union Spinning, Thai Melon, Thai American, Thai Blanket, and Thai Synthetic.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of certain yarns from Thailand. During the period of review, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5204.11.0000, 5204.19.0000, 5204.20.0000, 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000, 5206.45.0000, 5207.10.0000, 5207.90.0000, 5401.10.0000, 5402.31.3000, 5402.32.3000, 5402.33.6000, 5406.10.0020, 5406.10.0040, 5406.10.0090, 5508.20.0000, 5510.12.0000, 5510.90.4000, and 5511.30.0000.

Analysis of Programs

Based upon our analysis of the responses to our questionnaire and verification, we determine the following:

I. Programs Found To Be Used

A. Tax Certificates

Under Section II (c) of the suspension agreement, the producers and exporters can apply or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. If the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount by which the tax certificates exceed the import duties on physically incorporated inputs.

Tax certificate applications are made on a shipment by shipment basis after the producer/exporter receives payment for its shipment. The application can include up to 10 shipments and must be submitted within one year of the shipment date. Exporters can apply for an extension if they do not meet the one year deadline.

The law governing this program is the ''Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981).'' Effective January 1, 1992, new nominal rebate rates were established for all products by the Committee on Tax and Duty Rebates for Exported Goods Produced in the Kingdom. The new nominal rates applicable to signatories are categorized by the following sectors: spinning, weaving, made-up textile goods, and knitting. Because nominal rates are in excess of duties pertaining to physically incorporated inputs, the Department has calculated, and requested that the RTG implement non-excessive rates. *See* verification report dated September 15, 1994, and letter from Roland L. MacDonald to Arthur J. Lafave III dated November 15, 1994.

In the preliminary results, we found that Thai Melon, Thai American, Thai Synthetic, and Thai Blanket applied for tax certificates on subject merchandise to the United States at nominal rates during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results. On this basis, the Department will require that these companies repay the RTG, in an annual adjustment, the amount by which the tax certificates exceed the import duties on physically incorporated inputs.

B. Export Packing Credits

Under Section II (a) of the suspension agreement, the producers and exporters are not to apply for, or receive, Export Packing Credits (EPCs) from the Bank of Thailand (BOT) that permit the rediscounting of promissory notes arising from shipments of subject merchandise to the United States.

EPCs are pre-shipment short-term loans available to exporters for a maximum of 180 days from the date of issuance. Under the EPC program, commercial banks issue loans based on promissory notes from creditworthy exporters. Such notes have to be supported by an irrevocable letter of credit, a sales contract, a purchase order, or a warehouse receipt. The commercial bank will then resell 50% of the promissory note to the BOT at a lower interest rate. The maximum interest rate a commercial bank can charge the exporter is 10% per annum.

If an exporter does not fulfill the contract by the due date of the EPC, the BOT will automatically charge the commercial bank a penalty interest rate. The commercial bank will then pass this penalty onto the exporter. The penalty interest rate is 6.5% per annum calculated over the full term of the loan. However, penalties can be refunded if the exporter ships the merchandise within 60 days after the due date. If only a portion of the goods is shipped by the due date, the exporter receives a partial refund in proportion to the value of the goods shipped.

In the preliminary results, we found that Thai Melon and Thai American used this program for exports of subject merchandise to the United States. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results. On this basis, the net subsidy received on EPCs for this administrative review is 0.19%.

C. International Trade Promotion Fund

Under Section II (h) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of subject merchandise

exported, directly or indirectly, to the United States. Although the Department has never determined this program to be countervailable, we reviewed this program in the administrative review.

This program, governed by the ''Rule on Administration of the International Trade Promotion Fund (ITPF), B.E. 2532 (1989),'' promotes and develops Thai exports worldwide through incoming and outgoing trade missions. The ITPF provides training and seminars for exporters, and publicity through public advertisements.

In the preliminary results, we confirmed that Saha Union and its relateds (Union Spinning, Union Thread, and Venus Thread) participated in an international trade fair, promoting subject merchandise. However, Saha Union and its related companies paid their own expenses to participate in the trade fair. Thus, the signatories were not found to be in violation of the agreement. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

D. Duty Drawback

Under Section II (c) of the suspension agreement, exporters and producers are not to apply for, or receive, rebates on shipments of subject merchandise in excess of the import duties paid on items that are physically incorporated into exported products.

Under this program, Thai Customs will refund import duties paid on imported goods used in the production of an exported product. In order to qualify for duty drawback, the goods must be exported through an authorized port, the exports must be shipped within one year of the date of importation of the goods on which drawback is claimed, and the producer/exporter must request drawback within six months of the date of exportation of the goods.

In the preliminary results, we found that Saha Union, Union Spinning, Union Thread, Venus Thread, and Thai Melon used duty drawback on exported goods of subject merchandise to the United States. Based on verification, we determined that the amount of drawback received was not in excess of the items physically incorporated into the exported products. Hence, the signatories were not found to be in violation of the agreement. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

II. Programs Found Not To Be Used

In the preliminary results we found that the producers/exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Electricity Discounts
B. Repurchase of Industrial Bills
C. Investment Promotion Act: Section 28, 31, 35, and 36
D. Export Processing Zones
E. Double Deduction for Foreign Marketing Expenses

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

Analysis of Comments

Comment 1

ECS argues that the Department verified the continued existence of numerous subsidy programs and the continued receipt by several Thai yarn producers and exporters of benefits from several of the subsidy programs. They further claim that these subsidy benefits found by the Department are distinct from and are above and beyond the large subsidy benefits that were given to the Thai yarn industry under the Investment Promotion Act. ECS maintains that the large subsidy benefits received by the Thai yarn industry under the Investment Promotion Act were instrumental in the massive expansion of the capacity of the Thai yarn industry several years ago.

Department's Position

The Department disagrees with the arguments raised by ECS. As described in the preliminary results (60 FR 39363), the programs found to be used did not confer a subsidy which violated the terms of the agreement. Due to the unusual circumstances surrounding this case and the reinstatement of the suspension agreement, the Department does not consider the calculation of EPCs in this POR to constitute a violation of the agreement within the meaning of 19 CFR 355.19 (d)(1994). However, we note that Section II (a) of the suspension agreement prohibits participation by any signatory in the EPC program at noncommercial rates and terms for subject merchandise. Thus, in future reviews, the signatories shall follow Section II (a) of the suspension agreement or they will be found in violation of the agreement.

In regard to the tax certificates received by signatories during the POR, under Section II (c) of the suspension agreement, the producers and exporters can apply or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. However, if the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount by which the tax certificates exceed the import duties on physically incorporated inputs.

The Department will require that the signatories repay to the RTG, in an annual adjustment, any amount by which the tax certificate exceeds the amount of import duties on physically incorporated inputs. The annual adjustment shall be calculated in accordance with Section IIc (i) and (ii) of the suspension agreement.

With respect to the use of duty drawback, the Department verified that the amount received was not in excess of the import duties paid on physically incorporated inputs. Thus, the signatories were not in violation. (See verification report dated June 1, 1995).

Finally, the participation in the international trade promotion fund by four signatories does not confer a benefit because the Department verified that the signatories paid their own expenses. Furthermore, the Department has never determined this program to be countervailable.

Comment 2

ECS wants assurance that any benefits found by the Department during the period of review are repaid to the RTG in order to reverse any benefits received by the Thai yarn producers during the POR.

Department's Position

As stated above, the Department will require that the signatories repay the amount in which the tax certificates exceed import duties on physically incorporated inputs. If the signatories fail to comply with the Department, we will determine that the signatories have violated the agreement.

Comment 3

ECS urges the Department to maintain close scrutiny over the administration of the agreement so that the U.S. industry can be assured that the subsidies found by the Department will be repaid to the RTG and that such benefits will not continue in the future.

Department's Position

The Department will continue to closely monitor the administration of

the agreement in order to ensure that the excess amounts of the tax certificates are repaid and that the signatories do not receive any benefits in the future that would constitute a violation of the agreement.

Final Results of Review

For the period May 18, 1992 through December 31, 1993, we determine that the signatories were not in violation of the suspension agreement.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)(1994)) and 19 C.F.R. 355.22(1994).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–1454 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–401]

Certain Textile Mill Products From Thailand; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of the Countervailing Duty Administrative Review on Noncontinuous Noncellulosic Yarns (NCNC Yarns) covered under the Suspended Investigation on Certain Textile Mill Products from Thailand.

SUMMARY: On July 18, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review on NCNC Yarns covered under the agreement suspending the countervailing duty investigation on Certain Textile Mill Products from Thailand for the period January 1, 1993 through December 31, 1993 (suspension agreement). We have completed this review and have determined that the signatories were not in violation of the suspension agreement. However, we do note that the Department will require that one signatory repay the Royal Thai Government (RTG), in an annual adjustment, the amount by which the tax certificate received exceeded the import duties on physically incorporated inputs.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Yarbrough or Jim Doyle, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1990, the Department published in the Federal Register (55 FR 6669) a notice stating its intent to terminate the suspension agreement on certain textile mill products from Thailand (50 FR 9837, March 12, 1985). On March 26, 1990, the American Yarn Spinners Association (AYSA), a trade association, objected to the Department's intent to terminate the suspension agreement. As a result, on November 23, 1990, the Department terminated the suspension agreement with regard to all non-yarn products covered by the suspension agreement (55 FR 48885).

Subsequent to publication of the November 23, 1990 notice, counsel for the RTG filed a lawsuit in the United States Court of International Trade (CIT) challenging the Department's determination that AYSA had standing to oppose the termination of the suspension agreement. On May 17, 1991, the CIT remanded the determination to the Department for reconsideration of AYSA's standing to oppose the termination. On July 3, 1991, the Department issued remand results finding that AYSA had standing to oppose the termination vis-a-vis only one like product covered by the suspension agreement, i.e., NCNC yarns. The CIT affirmed the remand determination in its entirety on August 5, 1991. *The Royal Thai Government, et al.,* v. *United States,* Slip Op. 91–68 (August 5, 1991).

On March 16, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (59 FR 12240) of the suspension agreement for the period January 1, 1993 to December 31, 1993. The Department received requests for an administrative review of NCNC yarns on March 31, 1994, from AYSA and certain individual producers. On April 15, 1994, the Department initiated a countervailing duty administrative review on NCNC yarns for the period January 1, 1993 to December 31, 1993 (59 FR 18099, April 15, 1994). The Department verified the responses of the RTG and the Thai Textile Manufacturers Association (TTMA) from January 16 through January 25, 1995 pursuant to the administrative review.

On July 18, 1995, the Department published in the Federal Register (60 FR 36779) the preliminary results of its administrative review of NCNC yarns for the period January 1, 1993 through December 31, 1993. The Department invited interested parties to comment on the preliminary results. On August 14, 1995, a case brief was submitted by Economic Consulting Services (ECS), a representative for the AYSA and individual member companies of the AYSA.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The review covers nine programs and seven producers/exporters: Saha Union, Venus Thread, Union Thread, Union Spinning, Union Knitting, Union Industries, and Thai Melon.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of NCNC Yarns from Thailand. During the period of review (POR), such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5508.10.0000, 5509.21.0000, 5509.22.0010, 5509.22.0090, 5509.32.0000, 5509.51.3000, 5509.51.6000, 5509.69.4000, 5511.10.0030, 5511.10.0060, and 5511.20.0000.

Analysis of Programs

Based upon our analysis of our questionnaire and verification we determine the following:

I. Programs Found To Be Used

A. Tax Certificates

Under Section II (c) of the suspension agreement, the producers and exporters can apply for or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on

items that are physically incorporated into exported products. If the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount by which the tax certificates exceed the import duties on physically incorporated inputs.

Tax certificate applications are made on a shipment by shipment basis after the producer/exporter receives payment for its shipment. The application can include up to 10 shipments and must be submitted within one year of the shipment date. Exporters can apply for an extension if they do not meet the one year deadline.

The law governing this program is the ''Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981).'' Effective January 1, 1992, new nominal rebate rates were established for all products by the Committee on Tax and Duty Rebates for Exported Goods Produced in the Kingdom. The new nominal rates applicable to signatories are categorized by the following sectors: spinning, weaving, made-up textile goods, and knitting. Because nominal rates are in excess of the physically incorporated inputs, the Department has calculated, and requested that the RTG implement, non-excessive rates. *See* verification report dated September 15, 1994, and letter from Roland L. MacDonald to Arthur J. Lafave III dated November 15, 1994.

In the preliminary results, we found that Thai Melon applied for a tax certificate on subject merchandise to the United States at a nominal rate during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results. On this basis, the Department will require that Thai Melon repay the RTG, in an annual adjustment, the amount by which the tax certificate exceeded the import duties on physically incorporated inputs.

B. International Trade Promotion Fund

Under Section II (h) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of subject merchandise exported, directly or indirectly, to the United States. Although the Department has never determined this program to be countervailable, we reviewed this program in the administrative review.

This program, governed by the ''Rule on Administration of the International Trade Promotion Fund (ITPF), B.E. 2532 (1989),'' promotes and develops Thai exports worldwide through incoming and outgoing trade missions. The ITPF provides training and seminars for exporters, and publicity through public advertisements.

In the preliminary results, we confirmed that Saha Union and its relateds (Union Spinning, Union Thread, and Venus Thread) participated in an international trade fair, promoting subject merchandise. However, Saha Union and its related companies paid their own expenses to participate in the trade fair. Thus, the signatories were not found to be in violation of the agreement. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

C. Duty Drawback

Under Section II (c) of the suspension agreement, exporters and producers are not to apply for, or receive, rebates on shipments of subject merchandise in excess of the import duties paid on items that are physically incorporated into exported products.

Under this program, Thai Customs will refund import duties paid on imported goods used in the production of an exported product. In order to qualify for duty drawback, the goods must be exported through an authorized port, the exports must be shipped within one year of the date of importation of the goods on which drawback is claimed, and the producer/exporter must request drawback within six months of the date of exportation of the goods.

In the preliminary results, we found that Saha Union, Union Spinning, Union Thread, Venus Thread, and Thai Melon used duty drawback on exported goods of subject merchandise to the United States. Based on verification, we determined that the amount of drawback received was not in excess of the items physically incorporated into the exported product. Hence, the signatories were not found to be in violation of the agreement. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

II. Programs Found Not To Be Used

In the preliminary results we found that the producers/exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Electricity Discounts
B. Repurchase of Industrial Bills
C. Investment Promotion Act: Sections 28, 31, 35, and 36
D. Export Processing Zones
E. Double Deduction of Foreign Marketing Expenses
F. Export Packing Credits

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings in the preliminary results.

Analysis of Comments

Comment 1

ECS argues that the Department verified the continued existence of numerous subsidy programs and the continued receipt by several Thai yarn producers and exporters of benefits from several of the subsidy programs. They further claim that these subsidy benefits found by the Department are distinct from and are above and beyond the large subsidy benefits that were given to the Thai yarn industry under the Investment Promotion Act. ECS maintains that the large subsidy benefits received by the Thai yarn industry under the Investment Promotion Act were instrumental in the massive expansion of the capacity of the Thai yarn industry several years ago.

Department's Position

The Department disagrees with the arguments raised by ECS. As described in the preliminary results of administrative review (60 FR 39363), the programs found to be used did not confer a subsidy which violated the terms of the agreement.

In regard to the tax certificate received by Thai Melon during the POR, under Section II (c) of the suspension agreement, the producers and exporters can apply or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. However, if the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount by which the tax certificates exceed the import duties on physically incorporated inputs.

The Department will require that Thai Melon repay to the RTG, in an annual adjustment, any amount by which the tax certificate received exceeded the amount of import duties on physically incorporated inputs. The annual

adjustment shall be calculated in accordance with Section II c(i) and (ii) of the suspension agreement.

With respect to the use of duty drawback, the Department verified that the amount received was not in excess of the import duties paid on physically incorporated inputs. Thus, the signatories were not in violation. (See verification report dated June 1, 1995).

Finally, the participation in the international trade promotion fund by four signatories does not confer a benefit because the Department verified that the signatories paid their own expenses. Furthermore, the Department has never determined this program to be countervailable.

Comment 2

ECS wants assurance that any benefits found by the Department during the period of review are repaid to the RTG in order to reverse any benefits received by the Thai yarn producers during the POR.

Department's Position

As stated above, the Department will require that Thai Melon repay the amount in which the tax certificate exceeds the import duties on physically incorporated inputs. If Thai Melon fails to comply with this requirement, the Department will have grounds to determine that the signatory has violated the agreement.

Comment 3

ECS urges the Department to maintain close scrutiny over the administration of the agreement so that the U.S. industry can be assured that the subsidies found by the Department will be repaid to the RTG and that such benefits will not continue in the future.

Department's Position

The Department will continue to closely monitor the administration of the agreement in order to ensure that the excess amount of the tax certificate is repaid and that the signatories do not receive any benefits in the future that would constitute a violation of the agreement.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine that the signatories were not in violation of the suspension agreement.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)(1994)) and 19 CFR 3.5.5.22 (1994).

Dated: December 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–1455 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–DS–P

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATES AND LOCATION: The meeting will be held on February 22, 1996 from 10:00 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c) (4) and (9) (B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: January 22, 1996.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 96–1459 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 011796A]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee (PNCIAC), an advisory committee to the North Pacific Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on February 27, 1996, beginning at 9:00 a.m., and will end at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at Leif Erikson Hall, 2245 NW 57th St, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 206–547–7560.

SUPPLEMENTARY INFORMATION: The PNCIAC will review Alaska crab fishery issues and proposed changes to current regulations, and develop recommendations to be forwarded to the Alaska Board of Fisheries and the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Arni Thomson (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days prior to the meeting date.

Dated: January 22, 1996.

Richard W. Surdi,

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

[FR Doc. 96–1564 Filed 1–26–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on the CME Argentine Brady Bond Index and the CME Brazilian Brady Bond Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the CME Argentine Brady Bond Index and futures and futures options on the CME Brazilian Brady Bond Index. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 28, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Reference should be made to the CME Argentine Brady Bond Index and the CME Brazilian Brady Bond Index.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: The Exchange's proposed Brady bond contracts are based on indexes representing the sovereign debt of Argentina and Brazil. The Exchange has petitioned the SEC to grant the sovereign debt of Argentina and Brazil exempt status under SEC Rule 240.3a12–8. The SEC published the proposed amendment to Rule 240.3a12–8 in the Federal Register for a 30-day public comment period on December 20, 1995. Should the SEC add the sovereign debt of Argentina and Brazil to the list of exempted securities, the Commission would then be able to designate futures on such securities. *See* Section 2(a)(1)(B)(v) of the Act.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 23, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–1510 Filed 1–26–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Enhanced Training In Idaho Mountain Home AFB, ID

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) to analyze the proposed action regarding the establishment of a tactical training range in Owyhee County, Idaho supporting enhanced training for Mountain Home AFB and the Idaho Air National Guard. In conjunction with the range, modification of airspace would occur in the state of Idaho and Nevada. This proposal will be known as Enhanced Training in Idaho (ETI).

The Air Force proposes to establish the ETI in the eastern half of Owyhee County, Idaho, near Clover Butte. This proposal would establish a series of target areas including one tactical range, five simulated bombing target areas and a series of 30 emitter sites to compliment existing assets and allow various training opportunities.

The ETI would consist of a 12,000-acre tactical range designed to provide aircrews with a realistic target array that allows simultaneous attacks from any axis. Only small training munitions would be expended on the tactical range. In addition, the Air Force would establish five simulated bombing sites on which no ordnance would be expended. The simulated bombing target areas would consist of two industrial complexes with a railyard, two Surface-to-Air Missile sites, and a Forward Edge of Battle Area array. Four of the simulated bombing areas would each cover 5-acres and the remaining area would cover 1-square mile.

In addition to the target areas, the Air Force would establish ten 1-acre emitter sites and twenty 0.25-acre emitter sites. These emitter sites would allow the placement of simulated enemy threat radars to provide aircrews with a diverse target/threat array. In total, the proposed ETI would supplement the existing range facilities, and allow various target numbers and locations to provide realism and simulate anticipated combat conditions.

Airspace actions associated with the ETI would permit more efficient utilization of the airspace and range assets. The proposal includes expansion of the Owyhee Military Operations Area (MOA) to the north and expansion of the Paradise East MOA to the southeast to join the Owyhee MOA. Restricted airspace would be restructured within

the ETI area by eliminating R–3202B and R–3202C, elevating the ceiling of R–3202A to 29,000 MSL and establishing new restricted airspace around the 12,000-acre tactical range.

In addition to the proposed action, two alternatives will be considered: the no action alternative, and a 12,000-acre tactical range similar to the proposed range, but located further west, near Grasmere.

The Air Force will conduct public scoping meetings to assist it in determining the issues and concerns that should be addressed in the EIS. Notice of time and place of the scoping meetings will be made to public officials and announced in the news media in areas where the scoping meetings will be held.

To assure there will be sufficient time to consider public inputs on issues to be included in developing the EIS when attendance at the scoping meetings is not possible, comments should be forwarded to the addressee below by April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lt Col R. Oholendt, Air Combat Command Airspace and Range Management Division, HQ ACC/DOR, Langley Air Force Base, Virginia 23665; Telephone (804) 764–6026.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–1533 Filed 1–26–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army, Corps of Engineers

Jacksonville District, Jacksonville FL; Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for the Central and Southern Florida (C&SF) Project Comprehensive Review Study.

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), along with the South Florida Water Management District (SFWMD), intends to prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for the feasibility phase of the C&SF Project Comprehensive Review Study. The DPEIS will be done commensurate with the development of a comprehensive plan that addresses the water resource needs of south Florida through a re-examination of the design of the original C&SF Project, authorized in 1948 to provide flood control, water supply and other purposes to central and southern Florida.

FOR FURTHER INFORMATION CONTACT: Questiosn about the proposed action and DPEIS can be answered by: Mark Ziminske, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–1786.

SUPPLEMENTARY INFORMATION:

a. Authorization

The C&SF Project Comprehensive Review Study is authorized by Section 309(1) of the Water Resources Development Act of 1992 and two resolutions of the Committee on Public Works and Transportation, United States House of Representatives, dated September 1992. These authorizations direct the Corps to re-examine the design of the C&SF Project to determine if modifications should be made to the project in the interest of improving environmental quality, water supply, and Everglades and Florida Bay ecosystems, while meeting the overall water resource needs in the study area.

b. Study Area

The Study area includes the entire C&SF Project with the exception of the Upper St. Johns River Basin, which is a separate hydrologic basin, not part of the Everglades ecosystem. Contained within the study area are: All or part of Broward, Charlotte, Collier, Dade, Glades, Hendry, Highlands, Lee, Martin, Monroe, Okeechobee, Orange, Osceola, Palm Beach, PolK, and St. Lucie Counties, Florida.

c. Project Features and Scope

The Comprehensive Review Study will develop an overall C&SF Project initial comprehensive plan and develop the tools necessary to evaluate the effects of this plan, with particular attention to features specific to Lake Okeechobee, the Everglades Agricultural Area (EAA), the Water Conservation Areas (WCAs), Everglades National Park, Big Cypress National Preserve, the Lake Okeechobee Service Area, the Lower East Coast Service Area, and Native American tribal lands. The major components to be studied include: Alternatives for conveying water through the EAA, and modifying ground water levels to control soil subsidence; water storage in the Everglades headwaters to include Lake Okeechobee, the EAA, the WCAs, and Water Preserve Areas (WPAs); alternatives to reduce wildlife habitat fragmentation within natural areas; and alternative water regulation schedules for Lake Okeechobee and the WCAs. Further, concepts to capture and store excess surface water in WPAs located along the eastern boundary levees of the WCAs by backpumping surface water that is normally released to tide via the C&SF Project canal system will be investigated.

There is an extensive effort by Federal, State and local governments in central and southern Florida to restore the natural Kissimmee—Lake Okeechobee—Everglades system. Much of this effort depends a great deal on the findings, recommendations and ultimate direction resulting from the Comprehensive Review Study. Therefore, it is envisioned that a conceptual plan will be identified early in the study process to provide a framework as the Corps, SFWMD, and other agencies and the public articulate the ultimate comprehensive plan.

d. Scoping

The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies, affected Indian Tribes, and other interested private organizations and parties. A scoping letter will be sent to interested Federal, State and local agencies, interested organizations and the public, requesting their comments and concerns regarding issues they feel should be addressed in the DPEIS. Interested persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the address above. Significant issues anticipated include concern for: maintenance of flood protection and water supply, water quality, wetlands, fish and wildlife, recreation and aesthetics, historical and cultural resources, groundwater recharge, and threatened and endangered plant and animal species. Public meetings will be held over the course of the study, the exact location, dates, and times will be announced in public notices and local newspapers.

e. It is estimated that the DPEIS will be available to the public in November 1999.

George M. Strain,

Assistant Chief, Planning Division.

[FR Doc. 96–1457 Filed 1–26–96; 8:45 am]

BILLING CODE 3710–AJ–M

Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Harbor Improvements at St. Paul, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action includes deepening and widening the Federal entrance channel and maneuvering channels in St. Paul Harbor, St. Paul Island, Alaska and reducing damage caused by storm waves overtopping the existing breakwater. Dredging and dredged material disposal alternatives will be addressed with respect to fish and wildlife resources and social and cultural aspects. Breakwater overtopping prevention alternatives include submerged reef breakwater, construction of a breakwater toe, and placement of additional larger stones. Potential impacts associated with the proposed action include impacts to Salt Lagoon, impacts on least auklet nesting habitat, and water quality degradation to Salt Lagoon and Village Cove. The rock quarry for the breakwater overtopping alternatives will not be specified.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Mr. Guy McConnell, Chief, Environmental Resources Section, Alaska District Corps of Engineers, P.O. Box 898, Anchorage, Alaska 99506–0898, or phone (907) 753–2641.

SUPPLEMENTARY INFORMATION: A previous draft and final Environmental Impact Statement was written for this project in 1982. The Record of Decision was signed in 1983. The project was not built until 1989. Several environmental assessments were prepared and distributed for public review assessing changes in the original project design.

The harbor was designed to support a fishing fleet one-third the size of the current operating fleet, and it also lacks moorage for smaller boats. The harbor was not intended to have any floating or shore-based processing plants. The project design was 100 feet with a 12-foot unladen draft. The harbor currently serves a fleet of 230 transient vessels during the crabbing season, with three onshore processors and up to 27 floating processors in the immediate area of the harbor (within 3 miles). The design vessel for the proposed project is 350 feet long with a 23-foot draft. The present entrance channel and maneuvering channels are not adequate to safety accommodate these vessels.

The DSEIS will analyze the new harbor and breakwater alternatives, and other alternatives that may surface during the scoping process. Much of the information contained in the previous EIS and EAs will be incorporated by reference. The final EIS will be made available. Scoping of the EIS will include coordination with the interested local, State, and Federal agencies, the local public, native concerns, and other interested parties. Scoping meetings are planned for Anchorage and St. Paul Island.

Anticipated subjects to be addressed include, but are not limited to: water quality, Salt Lagoon, alcid nesting habitat, tideland fills, wetlands, rock quarry issues, and measures to minimize adverse impacts.

The expected completion date of the DSEIS is spring 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–1458 Filed 1–26–96; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 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 #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental 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.

Dated: January 24, 1996.

Gloria Parker,

Director, Information Resources Group.

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 LEASs.
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.

Office of Educational Research and Improvement

Type of Review: New.
Title: Campus Crime and Security at Postsecondary Education Institutions.
Frequency: Nonrecurring.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1,200.
Burden Hours: 600.
Abstract: This survey will provide information about campus crime and security at postsecondary institutions. The survey will be used in a mandated report to Congress, in compliance with the Crime Awareness and Campus Security Act.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Postsecondary Education Quick Information System (PEQIS).
Frequency: Nonrecurring.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 11,418.
Burden Hours: 2,374.
Abstract: The Postsecondary Education Quick Information System (PEQIS) is designed to conduct brief surveys of postsecondary institutions or State higher education agencies. PEQIS provides information that is needed quickly and that cannot be collected through traditional NCES surveys. PEQIS will conduct 4–5 surveys each year.

[FR Doc. 96–1496 Filed 1–26–96; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–30–000, et al.]

Massachusetts Institute of Technology, et al.; Electric Rate and Corporate Regulation Filings

January 18, 1996.

Take notice that the following filings have been made with the Commission:

1. Massachusetts Institute of Technology

[Docket No. EL96–30–000]

Take notice that on January 5, 1996, the Massachusetts Institute of Technology tendered for filing a Petition for Enforcement against the Massachusetts Department of Public Utilities pursuant to Section 210(h) of the Public Utility Regulatory Policies Act of 1978.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket No. ER96–619–000]

Take notice that on December 19, 1995, Tucson Electric Power Company for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER96–694–000]

Take notice that on December 26, 1995, Entergy Services, Inc. (ESI), acting as agent for Gulf States Utilities Company (GSU), submitted for filing a revised Exhibit A to Rate Schedule CSTS to the Power Interconnection Agreement between GSU and Cajun Electric Power Cooperative, Inc. The revised Exhibit A contains modifications to certain of the points of delivery between GSU and Cajun. Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the revised Exhibit A to become effective September 1, 1995.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER96–695–000]

Take notice that on December 26, 1995, Entergy Services, Inc. (Entergy Services), submitted for filing the Interchange Agreement between Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, New Orleans Public Service Inc., and Entergy Services and the City Water and Light Plant of the City of Jonesboro, Arkansas. To the extent necessary, Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's Regulations.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER96–696–000]

Take notice that on December 26, 1995, Public Service Company of Colorado (Public Service) tendered for filing a Power Purchase Agreement with Intermountain Rural Electric Association (Intermountain). The Power Purchase Agreement is intended to supersede Public Service Rate Schedule FERC No. 51, pursuant to which Public Service provides Intermountain with its requirements in excess of Intermountain's allocation of Western Area Power Administration Preference Power. Public Service states that the Power Purchase Agreement retains most of the same terms as Public Service Rate Schedule FERC No. 51, but extends its terms, retains the existing rate structure, and limits the ability of the parties to seek future rate modifications.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER96–697–000]

Take notice that on December 27, 1995, Puget Sound Power & Light Company tendered for filing its proposed non-discriminatory, open access Point-to-Point Transmission tariff, in accordance with the Commission's Notice of Proposed Rulemaking issued March 29, 1995, in Docket No. RM95–8–000 and Docket No. RM84–7–001.

Comment date: January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER96–700–000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Phibro, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Phibro, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Phibro, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER96–701–000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and MidCon Power Services Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to MidCon Power Services Corporation under northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and MidCon Power Services Corporation request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER96–702–000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Missouri Public Service.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Missouri Public Service under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Missouri Public Service request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER96–703–000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Coastal Electric Service Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Coastal Electric Services Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No ER95–1222–000. Northern Indiana Public Service Company and Coastal Electric Services Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER96–705–000]

Take notice that on December 27, 1995, Southern Indiana Gas & Electric Company (SIGECO), submitted for filing a Point-To-Point Transmission Service Tariff and a Network Integration Transmission Service Tariff. Under the terms of the tariffs, SIGECO will offer firm and non-firm point-to-point transmission service, network integration service and certain ancillary services to any entity eligible for mandatory transmission service under Rules 211 and 212 of the Federal Power Act. The tariffs offer eligible customers transmission services that are comparable to the transmission services that SIGECO provides itself.

SIGECO requests that the Commission permit the tariffs to become effective as of sixty days after filing.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Company

[Docket No. ER96–706–000]

Take notice that on December 27, 1995, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated December 20, 1995, establishing Western Gas Resources Power Marketing, Inc. (WGR) as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of December 20, 1995, for the service agreement with WGR. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon WGR and the Illinois Commerce Commission.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Company

[Docket No. ER96–707–000]

Take notice that on December 27, 1995, Montaup Electric Company (Montaup) filed an amendment to a June 19, 1987, contract under which Montaup provides transmission service necessary for the delivery of power which the New York Power Authority (NYPA) has allocated to the Massachusetts Department of Public Utilities (MDPU). The contract is between Montaup and Massachusetts Municipal Wholesale Electric Company (MMWEC) in MMWEC's capacity as agent for the MDPU in arranging for the transmission of NYPA power. The amendment provides for an extension in the term of the contract to correspond with an extended purchase from NYPA and also for delivery to additional recipients of such power.

Montaup requests waiver of the 60-day notice requirement in order to permit the amendment to become effective according to its terms on July 1, 1995.

Comment date: February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER96–704–000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and AES Power, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to AES Power, Inc., under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and AES Power, Inc. request waiver of the Commission's sixty-day

notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 1, 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. 96–1451 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL96–31–000, et al.]

South Carolina Public Service Authority, et al.; Electric Rate and Corporate Regulation Filings

January 22, 1996.

Take notice that the following filings have been made with the Commission:

1. South Carolina Public Service Authority

[Docket No. EL96–31–000]

Take notice that on January 11, 1996, the South Carolina Public Service Authority (the Authority) tendered for filing a Petition for Declaratory Order to Implement Open Access Transmission Tariffs (the Petition). The Authority submitted with its Petition a Network Integration Service Transmission Tariff and a Point-to-Point Transmission Service Tariff (the Tariffs). The Authority's Tariffs conform with the *Pro Forma* Tariffs issued by the Federal Energy Regulatory Commission (Commission) in its open access transmission proceeding in Docket No. RM95–8–000. In the Petition, the Authority requests that the Commission issue an order stating that, by placing its Tariffs into effect, the Authority has agreed to provide comparable service on similar terms and conditions over the Authority's Transmission Facilities, and thus satisfies any and all reciprocity requirements included by Public Utilities in their transmission tariffs. The Authority submitted cost information to support its Tariffs.

Comment date: February 20, 1996, in accordance with Standard paragraph E at the end of this notice.

2. Susquehanna Power Company and Delmarva Power and Light Company

[Docket No. EC96–9–000]

Take notice that on January 2, 1996, Susquehanna Power Company (Susquehanna Power) and Delmarva Power and Light Company (Delmarva) tendered for filing a joint Request for Approval of the Transfer of Facilities. The filing related to the transfer of title in certain distribution facilities to Delmarva from Susquehanna Power. A portion of the distribution facilities which are part of the Conowingo Hydroelectric Project (Conowingo Project) on the Susquehanna River are used solely to provide electric service to retail customers outside of the Conowingo Project in Cecil and Harford Counties in Maryland. The retail electric customers are customers of Delmarva. The distribution facilities to be transferred are physically located on the Conowingo Project and are owned by Susquehanna Power Company, but are not used for the Conowingo Project. Delmarva is not involved in the operation of the Conowingo Project, holds no interest in the Conowingo Project, and is not affiliated with ownership or operation of the Conowingo Project. Susquehanna Power and Delmarva are requesting that the Commission approve the transfer under section 203 of the Federal Power Act, 16 U.S.C. § 824(b) and part 33 of the Commission's Rules and Regulations 18 CFR 33.1 *et seq.*, since Delmarva is the utility who should have the control and responsibility for the distribution facilities necessary to serve its customers in Cecil and Harford Counties.

Comment date: February 8, 1996, in accordance with Standard paragraph E at the end of this notice.

3. Baltimore Gas and Electric Company and Potomac Electric Power Company

[Docket No. EC96–10–000]

Take notice that on January 11, 1996, Baltimore Gas and Electric Company (BGE) and Potomac Electric Power Company (PEPCO) (collectively applicant) filed pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1988), and part 33 of the Commission's Regulations, 18 CFR part 33, a Joint Application for an order authorizing and approving a proposed merger to combine their systems and to dispose of Applicants' jurisdictional facilities.

Pursuant to an Agreement and Plan of Merger, BGE and PEPCO will merge into a new corporation, to be named Constellation Energy Corporation (Constellation). The utility operations of BGE and PEPCO will be combined into a single utility. The subsidiaries of BGE and PEPCO will become subsidiaries of Constellation. The merger will be effected through an exchange of stock with BGE and PEPCO shareholders exchanging their shares for the right to receive shares in Constellation.

Applicants have submitted the direct testimony of ten witnesses who provide, among other things, a description of the merger, the projected benefits for ratepayers and shareholders, and explanation of how Constellation will provide comparable transmission service and an analysis of the effects of the merger on competition in the relevant markets. In a separate filing, Applicants on behalf of Constellation have submitted pro forma open-access point-to-point transmission and network integration service tariffs.

Copies of the Joint Application have been served on the State Utility Regulatory Commissions of the District of Columbia, Maryland, Pennsylvania and Virginia.

Comment date: February 20, 1996, in accordance with Standard paragraph E at the end of this notice.

4. Associated Power Services, Inc.

[Docket No. ER95–7–006]

On December 14, 1995, Associated Power Services, Inc. filed a notice of change in electing to utilize the three-year reporting option.

Comment date: February 2, 1996, in accordance with Standard paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER95–1258–000]

Take notice that on January 16, 1996, Idaho Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 5, 1996, in accordance with Standard paragraph E at the end of this notice.

6. USGen Power Services, L.P.

[Docket No. ER95–1625–001]

Take notice that on January 16, 1996, USGen Power Services, L.P. filed a revision to their Rate Schedule FERC

No. 1 as required by the Commission's December 13, 1995, order in Docket No. ER95–1625–000.

Comment date: February 5, 1996, in accordance with Standard paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER95–1800–000]

Take notice that on January 17, 1996, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company

[Docket No. ER96–393–000]

Take notice that on December 27, 1995, Jersey Central Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. IES Utilities Inc.

[Docket No. ER96–663–000]

Take notice that on December 22, 1995, IES Utilities, Inc. tendered for filing proposed changes to its FERC Electric Tariff, Original Volume No. 1.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER96–716–000]

Take notice that on December 29, 1995, Duquesne Light Company (DLC), filed a Service Agreement dated December 11, 1995, with North American Energy Conservation under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds North American Energy Conservation as a customer under the Tariff. DLC requests an effective date of December 11, 1995 for the Service Agreement.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER96–717–000]

Take notice that on December 29, 1995, Duquesne Light Company (DLC), filed a Service Agreement dated December 15, 1995 with Public Service Electric and Gas under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Public Service Electric and Gas as a customer under the Tariff. DLC requests an effective date of December 15, 1995 for the Service Agreement.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power Service Corporation

[Docket No. ER96–718–000]

Take notice that on December 29, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing a transmission service agreement between AEPSC and PECO Energy Company.

Copies of the filing were provided to PECO and the affected state regulatory commissions.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER96–719–000]

Take notice that on December 29, 1995, MidAmerican Energy Company (MidAmerican), One River Center Place, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, filed an initial Rate Schedule for Power Sales (Rate Schedule) which provides for wholesale sales by MidAmerican at market-based rates. The filing also includes amendments incorporating the Rate Schedule into twenty of MidAmerican's existing interchange agreements with other utilities. These amendments will permit MidAmerican and such other utilities to engage in voluntary transactions under those agreements in accordance with the Rate Schedule.

MidAmerican requests an effective date of February 1, 1996, for the Rate Schedule and amendments to existing interchange agreements and a waiver of the provisions of the Commission's regulations requiring a 60-day notice of the filing.

Copies of the filing were served on the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and each of the utilities affected by the amendments to the existing interchange agreements.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Company

[Docket No. ER96–720–000]

Take notice that on December 29, 1995, Tampa Electric Company (Tampa Electric), tendered for filing a Letter of Commitment providing for the sale of capacity and energy to the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna).

Tampa Electric proposes that the Letter of Commitment be made effective as of March 1, 1996.

Tampa Electric states that a copy of the filing has been served on New Smyrna and the Florida Public Service Commission.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER96–721–000]

Take notice that on December 29, 1995, Tampa Electric Company (Tampa Electric), tendered for filing a contract providing for a short-term sale of capacity and energy to Georgia Power Company (Georgia Power).

Tampa Electric proposed that the contract be made effective as of March 1, 1996.

Copies of the filing have been served on Georgia Power and the Florida and Georgia Public Service Commission.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER96–722–000]

Take notice that on December 29, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), tendered for filing certain amendments to the Interconnection and Power Supply Agreement between PSO and the Oklahoma Municipal Power Authority (OMPA) (OMPA PSA) and a letter agreement relating to the scheduling of power from certain units jointly owned by OMPA and SWEPCO.

PSO and SWEPCO request that the agreements submitted in the filing be accepted to become effective January 1, 1996 and, therefore, request a waiver of the Commission's prior notice filing requirements.

PSO and SWEPCO state that a copy of the filing has been served on OMPA and the Oklahoma Corporation Commission.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER96–723–000]

Take notice that on December 29, 1995, Public Service Company of New Mexico (PNM), tendered for filing Modification Number 6 (Modification 6) to Contract DE–ACO4–85AL27436 (Electric Service Agreement) between PNM and the United States Department of Energy (DOE).

Modification 6 provides for two changes to the existing rate schedule: (i) It extends the Electric Service Agreement for a period of time not to exceed one year from the current termination date of December 31, 1995; and (ii) it updates certain requirements of the Federal Acquisition Regulations pertaining to subcontracts.

PNM requests waiver of the Commission's notice requirements in order to allow Modification 6 to be implemented as of January 1, 1996.

Copies of this notice have been mailed to DOE, Incorporated County of Los Alamos, New Mexico and the New Mexico Public Utility Commission.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Oklahoma Gas and Electric Company

[Docket No. ER96–724–000]

Take notice that on December 29, 1995, Oklahoma Gas and Electric Company, tendered for filing a notice of cancellation of the Letter Agreement with AES Power, Inc. (AESPI) for the sale of capacity and energy.

Copies of this filing have been sent to AESPI, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Pacific Gas and Electric Company

[Docket No. ER96–725–000]

Take notice that on December 29, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a rate for distribution service to be provided to PG&E to Destec Power Services, Inc (DPS) under the Control Area and Transmission Service Agreement between PG&E and DPS, PG&E Rate Schedule FERC No. 185.

PG&E has requested certain waivers.

Copies of this filing were served upon DPS and the California Public Utilities Commission.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Great Bay Power Corporation

[Docket No. ER96–726–000]

Take notice that on December 29, 1995, Great Bay Power Corporation (Great Bay) tendered for filing revisions to its Tariff for Short-Term Sales, under which it sells capacity and/or energy from its ownership interest in Seabrook Unit No. 1 and/or purchased power. The currently effective Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. Great Bay requests an effective date for the revisions of February 27, 1996.

Great Bay states copies of the filing were served on existing customers and on the New Hampshire Public Utilities Commission.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Maine Public Service Company

[Docket No. ER96–727–000]

Take notice that Maine Public Service Company (MPS), on December 29, 1995, tendered for filing a proposed Interconnection Agreement with Houlton Water Company.

Copies of the Section 205 filing were served upon MPS' jurisdictional customer under this agreement and the Maine Department of Public Utilities.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Great Bay Power Corporation

[Docket No. ER96–728–000]

Take notice that on December 29, 1995, Great Bay Power Corporation (Great Bay) tendered for filing two service agreements between Fitchburg Gas and Electric Light Company and Great Bay and UNITIL Power Corp. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreements are proposed to be effective January 1, 1996.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER96–729–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on December 29, 1995, tendered for filing, as an initial rate schedule, an agreement with PECO Energy Company (PECO). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PECO and PECO will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on December 30, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PECO.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER96–730–000]

Take notice that on December 29, 1995, The Cincinnati Gas & Electric Company and PSI Energy, Inc. filed with the Commission a notice of acceptance of the status as signatory parties to the Western System Power Pool Agreement. The filing companies request that their membership be made effective as of January 1, 1996.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–731–000]

Take notice that on December 29, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for System Power Transactions with Morgan Stanley Capital Group, Inc. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms of the Agreement.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Connecticut Yankee Atomic Power Company

[Docket No. ER96–732–000]

Take notice that on December 29, 1995, Connecticut Yankee Atomic Power Company (Connecticut Yankee) filed materials that it states are to comply with the Commission's Statement of Policy issued on December 17, 1993 in Docket No. PL93–1–000. The Statement of Policy required companies to implement the accrual method of accounting for post-employment benefits other than pensions for company employees, as described in the Statement of Financial Accounting Standards No. 106 (SFAS 106), and to reflect that change in a filing with the Commission within three years of implementation of this accounting method. Connecticut Yankee implemented SFAS 106 on January 1, 1993, and has had no rate case since that date.

Connecticut Yankee states that there is no change in rates or charges as a

result of this filing. Connecticut Yankee further states that copies of the filing were served on its purchasers and the state public utility commissions in each state in which the purchasers distribute or sell electricity at retail.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power Corporation

[Docket No. ER96–733–000]

Take notice that on December 28, 1995, Florida Power Corporation (Florida Power) tendered for filing an amendment to the agreement under which it provides partial requirements resale service to the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna). The amendment establishes New Smyrna's contract demands for the period beginning January 1, 1996 and ending February 29, 2000, as follows:

1996 Contract Demand (Jan.–Feb.)—30 MW
1996 Contract Demand (Mar–Dec.)—24 MW
1997 Contract Demand—24 MW
1998 Contract Demand—24 MW
1999 Contract Demand—24 NW
2000 Contract Demand—24 MW

The amendment also provides that Florida Power will provide to New Smyrna and that New Smyrna will purchase six megawatt of stratified peaking service under Florida Power's sales tariff filed in Docket No. ER96–89–000. The period of the purchase is to begin at 12:01 on March 1, 1996 and end at Midnight on February 29, 2000 unless extended by mutual agreement. New Smyrna is entitled to substitute base and/or intermediate service purchased under the tariff for the peaking service. The prices for the service are negotiated prices in accordance with the tariff. An executed tariff service agreement is included with the filing.

The Company requests that this filing be allowed to become effective on March 1, 1996.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Energy Marketing Services, Inc.

[Docket No. ER96–734–000]

Take notice that on December 22, 1995, Energy Marketing Services, Inc. tendered for filing an application for Blanket Authorization, Certain Waivers and an Order Accepting Rate Schedule.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Kentucky Utilities Company

[Docket No. ER96–735–000]

Take notice that on December 28, 1995, Kentucky Utilities Company (KU) tendered for filing information on transactions that occurred during December 1, 1995, through December 15, 1995, pursuant to the Power Services Tariff accepted by the Commission in

[Docket No. ER95–854–000]

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. American Electric Power Service Corporation

[Docket No. ER96–736–000]

Take notice that American Electric Power Service Corporation (AEPSC), on December 29, 1995, tendered for filing (1) a transmission service agreement, dated December 26, 1995 (TSA) between Columbus Southern Power Company (CSP) and American Municipal Power-Ohio, Inc. (AMP-Ohio), and (2) 3 supplemented agreements with municipal utilities (Cities) served by CSP under CSP's municipal resale service tariff.

A copy of the filing was served upon the Cities, AMP-Ohio, and the Public Utility Commission of Ohio.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. American Electric Power Service Corporation

[Docket No. ER96–737–000]

Take notice that American Electric Power Service Corporation (AEPSC), on December 29, 1995, tendered for filing (1) a transmission service agreement, dated December 26, 1995 (TSA) between Ohio Power Company (OPCO) and American Municipal Power-Ohio, Inc. (AMP-Ohio), and (2) 15 supplemental agreements with municipal utilities (Cities) served by OPCO under OPCO's Municipal Resale Service Tariff.

A copy of the filing was served upon the Cities, AMP-Ohio, and the Public Utility Commission of Ohio.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER96–738–000]

Take notice that on December 29, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Industrial Energy Applications, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of December 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. New Hampshire Public Service Company

[Docket No. ER96–739–000]

Take notice that on December 28, 1996, New Hampshire Public Service Company (PSNH) tendered for filing an information statement concerning PSNH's fuel purchased power adjustments clause charges and credits under the captioned rate schedule filings.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER96–740–000]

Take notice that on December 22, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 7 to add eight (8) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing: Aquila Power Corporation Cenergy, Inc., Heartland Energy Services, MidCon Power Services Corp., Morgan Stanley Capital Group Inc., Phibro Inc., Sonat Power Marketing In., and Tenneco Energy Marketing Company. The APS Companies request a waiver of notice requirements to make service available as of November 28, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation

Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. MidAmerican Energy Company

[Docket No. ER96–741–000]

Take notice that on December 29, 1995, MidAmerican Energy Company tendered for filing a Notice of Succession in the above-referenced docket.

Comment date: February 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

36. New York Power Pool

[Docket No. ER96–762–000]

Take notice that the Member Systems of the New York Power Pool (NYPP), on January 5, 1996, tendered for filing a rate schedule for coordination service with Enron Power Marketing, Inc. (EPMI). The rate schedule would enable the Member Systems of NYPP to enter into purchases and sales of specified services, including economy energy transactions, with EPMI. Included with the filing was a certificate of concurrence signed by EPMI. NYPP accordingly, requested waiver of the Commission's notice requirements for good cause shown.

In addition, on January 11, 1996 NYPP filed an amendment to its January 5, 1996, filing in this docket.

Copies of these filings were served on EPMI and the New York State Public Service Commission.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

37. Citizens Utilities Company

[Docket No. ES96–17–000]

Take notice that on January 16, 1996, Citizens Utilities Company (Citizens), filed an application, under Rule 204 of the Federal Power Act, seeking authorization to issue (a) Up to $800 million principal amount of unsecured promissory notes outstanding at any one time, (b) up to $800 million aggregate principal amount of debt securities with a final maturity or maturities of not less than 9 months nor more than 50 years, and (c) 73 million shares of Citizens' Common Stock (subject to adjustment for stock splits, stock dividends, recapitalizations and similar changes after the date of this application), and $400 million liquidation value of Citizens' Preferred Stock, subject to an overall limitation, at any one time, of the securities to be issued under (a), (b), and (c) of $800 million.

Comment date: February 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

38. El Paso Electric Company

[Docket No. FA91–57–001]

Take notice that on May 2, 1995, El Paso Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

39. Citizens Utilities Company

[Docket No. TX96–3–000]

Take notice that on January 11, 1996, Citizens Utilities Company tendered for filing a Second Application for an order pursuant to sections 211 and 212 of the Federal Power Act for transmission service from Swanton Village, Vermont.

Comment date: February 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

40. Suffolk County Electrical Agency

[Docket No. TX96–4–000]

Take notice that on January 17, 1996, the Suffolk Electrical Agency (SCEA) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order the Long Island Lighting Company (LILCo) to provide transmission services pursuant to section 211 of the Federal Power Act, as amended by the Energy Policy Act of 1992 (16 U.S.C. 824j).

SCEA is a municipal power agency created by Suffolk County, New York, and authorized to provide electric service to inhabitants of the County. The applicant alleges that LILCo has refused to provide the firm network transmission service requested by the SCEA, thereby utilizing its transmission dominance to foreclose competition in bulk power markets.

The Applicant is requesting that LILCo provide 30 MW of firm network transmission service (200 MW to effectuate SCEA's provision of Residential Service and 100 MW to effectuate SCEA's provision of Economic Incentive Service), that LILCo make available all necessary ancillary services, and that LILCo make the service available commencing on June 1, 1996, or the earliest possible date thereafter, for a duration of at least ten years.

A copy of the filing was served on LILCo.

Comment date: February 21, 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. 96–1526 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2609, New York]

International Paper Company and Curtis/Palmer Hydroelectric Company, L.P.; Notice of Agency Scoping Meeting Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

January 22, 1996.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the International Paper Company and Curtis/Palmer Hydroelectric Company, L.P. (hereinafter referred to as International Paper) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission for the Curtis/Palmer Falls Hydroelectric Project. Two public Scoping meetings were held on January 12, 1996. However, due to inclement weather and federal government furloughs, another scoping session geared to agency concerns will be held, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the agency scoping meeting, International Paper will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantified data, on the issues

in question; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although International Paper's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Although this meeting is geared toward agency interests, interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying an clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was sent out on December 7, 1995, as part of the Initial Stage Consultation Document (ISCD). Copies of the Scoping Document and ISCD will also be available at the meetings.

The meeting will be held on February 8, 1996, at 9:30 a.m. at the Hudson River Mill, Corinth, New York. A cooperative team meeting will follow the agency scoping meeting.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another NEPA scoping meeting when the application and EA are filed with the Commission in April 1998. Instead, Commission staff will attend the meeting held on February 8, 1996.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Curtis/Palmer Falls Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Robert Hunziker, International Paper Company, Two Manhattanville Road, Purchase, New York 10577, by March 11, 1996. Correspondence should clearly show the following caption on the first page: Scoping Comments, Curtis/Palmer Falls Hydroelectric Project, FERC No. 2609, New York.

For further information, please contact Stuart Field at (518) 654–3445 (International Paper Company), Rich Takacs at (202) 219–2840, or Steve Naugle (202) 219–2805.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1452 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2055–000, et al.]

Hydroelectric Applications [Idaho Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2055–000.

c. Date filed: November 28, 1995.

d. Submitted By: Idaho Power Company, current licensee.

e. Name of Project: C.J. Strike.

f. Location: On the Snake River, in Owyhee and Elmore Counties, Idaho.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Effective date of original license: December 1, 1950.

i. Expiration date of original license: November 30, 2000.

j. The project consists of: (1) A 115-foot-high earthfill dam impounding a reservoir with surface area of 7,500 acres at surface elevation of 2,455 feet mean sea level; (2) a reinforced concrete intake structure; (3) three 25-foot-diameter, 300-foot-long steel penstocks; (4) a reinforced concrete powerhouse with a total installed capacity of 82,800 kilowatts; and (5) other appurtenances.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Rober W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

l. FERC contact: Hector M. Perez, (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 1998.

2a. Type of Application: Amendment to Revise Project Boundary.

b. Project No: 2105–035.

c. Date Filed: December 13, 1995.

d. Applicant: Pacific Gas & Electric Company.

e. Name of Project: Upper North Fork Feather River.

f. Location: On the North Fork Feather River, near the town of Quincy, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Jeff Butler, Manager, Hydro Generation, Pacific Gas & Electric Company, Mail Code: N11C, P.O. Box 770000, San Francisco, CA 94177, (415) 973–5311.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: February 20, 1996.

k. Description of Amendment: Licensee proposes to revise the boundary of the Upper North Fork Feather River Project, FERC No. 2105. The revision to project boundary would exclude a 30.84-acre portion of land adjacent to Lake Almanor. This land would be used by Chester Public Utility District for expansion of an existing wastewater treatment facility.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3a. Type of Application: Surrender of Conduit Exemption.

b. Project No: 3235–003.

c. Date Filed: November 20, 1995.

d. Exemptee: Greater Lawrence Sanitary District.

e. Name of Project: Greater Lawrence.

f. Location: Merrimack Canal, Essex County, MA.

g. Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Exemptee Contact: Richard S. Hogan, P.E., Executive Director, Greater Lawrence Sanitary District, 240 Charles Street, North Andover, MA 01845–1649, (508) 685–1612.

i. FERC Contact: Dean C. Wight, (202) 219–2675.

j. Comment Date: February 23, 1996.

k. Description of Proposed Action: The existing project consists of a turbine located in the outfall pipe of the exemptee's wastewater treatment plant.

The exemptee states that the project is currently non-operational due to turbine failure and that it will undertake priority facility improvements rather than replace the turbine.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

4a. Type of Application: Surrender of License.

b. Project No.: 8404–022.

c. Date Filed: December 18, 1995.

d. Licensee: Windsor Locks Canal Company.

e. Name of Project: Windsor Locks Project.

f. Location: Connecticut River, Hartford County, CT.

g. Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Licensee Contact: W. F. Fitzpatrick, General Manager, Windsor Locks Canal Company, 2 Elm Street, Windsor Locks, CT 06096, (860) 654–8300.

i. FERC Contact: Dean C. Wight, (202) 219–2675.

j. Comment Date: February 23, 1996.

k. Description of Proposed Action: The licensee proposes to surrender the license because it has determined that development of the project is not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. Type of Application: Original License.

b. Project No.: 11472–000.

c. Date Filed: April 8, 1994.

d. Applicant: Consolidated Hydro Maine, Inc.

e. Name of Project: Burnham Hydroelectric Project.

f. Location: On the Sebasticook River in Somerset and Waldo Counties, Maine.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825 (r).

h. Applicant Contact: Wayne E. Nelson, Consolidated Hydro Maine, Inc., c/o Consolidated Hydro, Inc., Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, (508) 681–1900.

i. FERC Contact: Thomas Dean (202) 219–2778.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The constructed project would consist of: (1) An existing dam and intake structure; (2) an existing 304 acre reservoir; (3) an existing powerhouse containing three generating units with a total installed capacity of 1,050 kilowatts; (4) a substation and 34.5 kilovolt (kV) transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 6,300 megawatt-hours for the constructed project.[1]

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 1–A, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Consolidated Hydro Maine, Inc., Andover Business Park, 200 Bulfinch Drive, Andover, Massachusetts, 01810, or by calling Wayne E. Nelson at (508) 681–1900.

6a. Type of Application: Lease Project Lands for Proposed Recreational Park.

b. Project No.: 2146–074.

c. Date Filed: November 14, 1995.

d. Applicant: Alabama Power Company.

e. Name of Project: Coosa River Hydroelectric Project.

f. Location: About 150 acres of land on the Weiss Reservoir just south of the city of Leesburg, Cherokee County, Alabam.

g. Filed Pursuant to: 18 CFR 4.200.

h. Applicant Contact: Mr. Jim Crew, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 250–4265.

i. FERC Contact: Steve Hocking (202) 219–2656.

j. Comment Date: February 23, 1996.

k. Description of Amendment: Alabama Power Company, licensee for the Coosa River Hydroelectric Project, seeks Commission approval to grant a lease to the Town of Leesbury (Town) to build a recreational park on project lands. The proposed lease is for about 150 acres of land adjacent to the Weiss Reservoir just south of the Town. The proposed recreational part would eventually have the following facilities: a boat ramp, picnic area, bath house, amphitheater, camping area, playground, swimming area, hiking trails, a civic building, and parking areas.

l. This notice also consists of the following standard paragraphs: B, C1 and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

[1] The applicant proposed in its license application to add a fourth turbine for generation at the dam to enable use of minimum flows released to the bypassed reach. This would increase the installed capacity to 1,430 kilowatts and the annual generation to 6,650 megawatt-hours. In response to our Scoping Document, the applicant stated in a letter dated December 18, 1995, that it will make a final decision regarding the addition of this unit following the issuance and acceptance of the license, based on equipment costs and energy market conditions, and minimum flow and headpond fluctuations conditions in the license order.

be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (March 18, 1996 for Project No. 11472–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (May 1, 1996 for Project No. 11472–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: January 24, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1527 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–138–000]

EnergyOnline, Inc.; Notice of Issuance of Order

January 24, 1996.

On October 24, 1995, as amended November 20, 1995, EnergyOnline, Inc. (EnergyOnline) submitted for filing a rate schedule under which EnergyOnline will engage in wholesale electric power and energy transactions as a marketer. EnergyOnline also requested waiver of various Commission regulations. In particular, EnergyOnline requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EnergyOnline.

On January 5, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject of the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EnergyOnline should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EnergyOnline is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EnergyOnline's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 5, 1996. Copies of the full text of the order are available from the

Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1528 Filed 1–26–96;8:45am]

BILLING CODE 6717–01–M

[Docket No. ER96–751–000]

Kentucky Utilities Company; Notice of Filing

January 23, 1996.

Take notice that on December 18, 1995, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during November 16, 1995 through November 30, 1995, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

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 February 2, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1488 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–145–000]

Lawrenceburg Gas Company; Notice of Application

January 23, 1996.

Take notice that on January 18, 1996, Lawrenceburg Gas Company (Lawrenceburg), 139 East Fourth Street, Cincinnati, OH 45202, filed in Docket No. CP96–145–000 an application pursuant to Section 7(c) of the Natural Gas Act for limited authorizations in connection with providing transportation service for the Cincinnati Gas & Electri Company (Cincinnati), all as more fully set forth in the application on file with the Commission and open to public inspection.

The authorizations requested by Lawrenceburg include: (1) a limited jurisdiction certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA) authorizing the transportation of gas by Lawrenceburg for Cincinnati to serve, for a period of between six and 12 months, a small number of customers on Cincinnati's distribution system; (2) a certificate of public convenience and necessity under Section 7(c) of the NGA to install and operate a 22.5-inch meter that will interconnect Lawrenceburg's facilities with those of Cincinnati at the Indiana-Ohio border; (3) pre-granted abandonment authorization for the certificates of public convenience and necessity requested herein; and (4) waiver of the Commission's reporting and accounting requirements ordinarily applicable to natural gas companies under the NGA and the Natural Gas Policy Act of 1978 and any waivers that the Commission may deem necessary.

Lawrenceburg states that on or about April 1, 1996, the Ohio Department of Transportation will commence construction work on a bridge on which certain Cincinnati facilities are located and that these facilities will have to be removed for a period of approximately six to 12 months. Lawrenceburg states that the result of removing these facilities is that a small portion of Cincinnati's service territory, including 62 residential customers, one school, and two industrial customers, will not be able to receive natural gas absent either Lawrenceburg's delivery of gas, as proposed herein, or the construction of costly temporary pipeline facilities.

Lawrenceburg states that pursuant to a transportation agreement dated January 17, 1996 (Rate Schedule X–1), Cincinnati will utilize its upstream capacity on Texas Gas Transmission Corporation (Texas Gas) and deliver gas to Lawrenceburg's Guilford Station interconnection with Texas Gas. Lawrenceburg states that it will take delivery of Cincinnati's gas and redeliver the gas at its interconnection with Cincinnati at the Indiana-Ohio border. Lawrenceburg anticipates that it will deliver a total of between 150,000 and 325,000 Dth during the period of the service described herein.

Lawrenceburg states that the proposed service will not adversely affect Lawrenceburg's nonjurisdictional distribution service due to the limited volumes delivered and limited facilities utilized by the proposed service.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 13, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application. if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Lawrenceburg to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1487 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–49–001]

National Fuel Gas Supply Corporation; Notice of Petition To Vacate In-Part

January 23, 1996.

Take notice that on January 18, 1996, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–49–001 a ''Notice of Continuation of Service'' stating that National would continue service to Boston Gas Company (Boston Gas) under National's SS–2 Rate Schedule, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

On December 19, 1995, the Commission issued an order in Docket No. CP96–49–000, granting the authority requested by National on

November 3, 1995, to abandon storage service to Boston Gas under National's SS–2 Rate Schedule and to abandon storage service to three other customers (Orange & Rockland Utilities, Inc., Penn Fuel Gas, Inc. and The Southern Connecticut Gas Company), effective April 1, 1996.[1]

National states that following the filing of National's application, National and Boston Gas entered into negotiations over the continuation of Boston Gas' SS–2 service. National states that these negotiations have culminated in an agreement extending the primary term of Boston Gas' SS–2 service agreement through March 31, 1998. National states that, in this regard, National is authorized by Boston Gas to state that Boston Gas rescinds its notice of termination given to National in March, 1995. National states that it deletes Boston Gas from the services it proposed to terminate.

The Commission will treat National's Notice of Continuation of Service as a petition to vacate in-part the authorization granted pursuant to Section 7(b) in Docket No. CP96–49–000.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary

[FR Doc. 96–1485 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 73 FERC ¶ 62,180 (1995).

[Docket No. CP96–136–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 23, 1996.

Take notice that on January 16, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP96–136–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) to construct and operate certain facilities in Logan County, Arkansas, authorized in blanket certificate issued in Docket No. CP82–384–000 and CP82–284–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to construct and operate a 2-inch tap and 1-inch first-cut regulator on NGT's Line BT–14 in Section 29,Township 8 North, Range 25 West, Logan County, Arkansas. NGT states that the gas would be delivered to ARKLA, a distribution division of NorAm Energy Crop. (AKRLA). NGT further states that the volumes to be delivered to this meter station would be approximately 600 MMBtu annually and 2.5 MMBtu on a peak day. The estimated cost of construction of the tap and first-cut regulator would be $2,700, which would be reimbursed by ARKLA.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1486 Filed 1–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–149–000 and RP94–145–000]

Pacific Gas Transmission; Notice of Informal Settlement Conference

January 23, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday and Wednesday, January 30–31, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Betsy R. Carr at (202) 208–1240 or Russell B. Mamone at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 96–1529 Filed 1–26–96; 8:45am]

BILLING CODE 6717–01–M

Western Area Power Administration

Proposed Power Allocation Procedures and Call for Applications, Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocation Procedures and Call for Applications.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, is publishing this notice of proposed procedures to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905, published at 60 FR 54151. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. These proposed procedures, in conjunction with the Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860) will establish the framework for allocating power from the resource pool to be established for the Pick-Sloan Missouri Basin Program—Eastern Division (PSMBP–ED).

DATES: The comment period on the proposed procedures will begin with the publication of this notice in the Federal Register and will end March 4, 1996. To be assured of consideration, all written comments must be received by the end of the comment period. Western will hold public information forums and public comment forums on the proposed procedures on February 14,

15, and 16, 1996 at the following locations and times:

February 14, 1996, Hilton Sioux Hotel, 707 Fourth St., Sioux City, Iowa, Information forum—1 p.m. (not to exceed 2 hours), Comment forum—immediately following the information forum

February 15, 1996, Best Western Doublewood Inn, 3333 13th Avenue South, Fargo, North Dakota, Information forum—1 p.m. (not to exceed 2 hours), Comment forum—immediately following the information forum

February 16, 1996, Holiday Inn, 1902 LaCross Street, Rapid City, South Dakota, Information forum—9 a.m. (not to exceed 2 hours), Comment forum—immediately following the information forum

ADDRESSES: All written comments regarding these proposed procedures should be directed to the following address: Mr. Joel K. Bladow, Acting Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800.

All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Upper Great Plains Customer Service Region located at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Harris, Assistant Area Manager for Engineering and Marketing, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394.

After all public comments have been thoroughly considered, Western will prepare and publish the Final Post 2000 Resource Pool Allocation Procedures in the Federal Register.

SUPPLEMENTARY INFORMATION: On October 20, 1995, Western published the Final Rule for the Program. The rule became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is the establishment of project-specific power resource pools when existing resource commitments expire and the allocation of power from these pools to new preference customers.

Existing resource commitments for the PSMBP–ED expire on December 31, 2000. In accordance with the Program, 96 percent (96%) of the firm power resources determined to be available at that time will be extended to existing customers. The remaining 4 percent (4%) will be placed in a resource pool from which power allocations to new customers will be made in accordance with these procedures and the Post-1985 Marketing Plan.

The Proposed Post-2000 Resource Pool Allocation Procedures

These proposed procedures for the PSMBP–ED address (1) eligibility criteria; (2) how Western plans to allocate the pool resources to new customers as provided for in the Program; and (3) the terms and conditions under which Western will sell the power allocated.

I. Amount of Pool Resources

Western proposes to allocate 4 percent (4%) of the PSMBP–ED long-term firm hydroelectric resource available as of January 1, 2001 as firm power (firm power) as provided for by the Program. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western electric service contract.

II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2000 Resource Pool Allocation Procedures.

A. Qualified utility applicants and qualified Native American applicants must be preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Qualified utility applicants and qualified Native American applicants must be located within the currently established PSMBP–ED marketing area.

C. Qualified utility applicants must not be currently receiving benefits, directly or indirectly, from a current PSMBP–ED firm power allocation. Qualified Native American applicants are not subject to this requirement.

D. Qualified utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants must have utility status by December 31, 1996. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post 2000 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing PSMBP—ED marketing area. This marketing area includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota and eastern Nebraska. The marketing area of the PSMBP—ED is Montana east of the Continental Divide, all of North and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and thence northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on estimated load developed by the Native American Tribes. Inconsistent estimates will be adjusted by Western during the allocation process. Western is willing to consult with the Tribes to develop load estimating methods assuring consistent Native American load estimates across the region.

E. Allocations made to utility customers will be based on the loads experienced in the 1994 summer season and the 1994–95 winter season. Western will use Mid-Continent Area Power Pool data trends to adjust this data in order to apply Post-1985 Marketing Plan criteria.

F. Energy provided with firm power will be based upon the customer's monthly system load factor.

G. Any electric service contract offered to a new customer shall be executed by the customer within six (6) months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The initial resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm

power not under contract will be used as determined by Western.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for utility customers shall be 5,000 kilowatts (kW).

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to the tribes.

IV. General Contract Principles

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post 2000 Resource Pool Allocation Procedures.

A. Western shall reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent (5.0%) for new project pumping requirements, by giving a minimum of five (5) years' written notice in advance of such action.

B. Western, at its discretion and sole determination, shall reserve the right to adjust the contract rate of delivery on five (5) years' notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after public process.

C. Western shall assist the allottee in obtaining third-party transmission arrangements for delivery of firm power allocated under these proposed procedures to new customers; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

D. Contracts entered into under the proposed Post 2000 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from January 1, 2001, through December 31, 2020.

E. The contracts entered into as a result of the proposed procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

V. Applications for Firm Power

Western requests all applications be submitted in writing to the Regional Manager, Upper Great Plains Customer Service Region, for an allocation of firm power under these procedures. Applications must be made only via certified, return receipt requested U.S. mail. No other means of submitting applications will be accepted. The applications must be received in Western's Upper Great Plains Customer Service Region at P.O. Box 35800, Billings, Montana 59107–5800, no later than the close of business on March 4, 1996.

A. Letter of Interest and Applicant Profile Data (APD)

Each applicant must submit to the Regional Manager, Upper Great Plains Customer Service Region, a Letter of Interest in receiving firm power and the appropriate APD as outlined below.

B. Applicant Profile Data

The content and format of the APD are outlined below. The information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that is not applicable. The APD must be typed and two copies submitted by certified or return receipt requested mail to Western's Upper Great Plains Customer Service Region by the date specified above. The burden of ensuring consistency of the content of both copies rests with the applicant. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the organization seeking the allocation.

1. The APD shall consist of the following:

a. Applicant:

i. Applicant's name and address.

ii. Person(s) representing applicant: Please provide the name, address, title, and telephone number of such person(s).

iii. Type of organization: For example, municipality, rural electric cooperative, Native American tribe, state agency, Federal agency. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility system.

iv. Applicable law under which organization was established.

b. Loads:

i. Utility Customers:

(1) Number and type of customers served; i.e., residential, commercial, industry, military base, agricultural.

(2) The actual monthly maximum demand in (kilowatts) and energy use (in kilowatt-hours) experienced in the 1994 summer season (May 1994 through October 1994) and the 1994–95 winter season (November 1994 through April 1995).

ii. Native American Tribes:

(1) Estimated maximum demand in kilowatts with a description of the method and basis for this estimated demand.

c. Resources:

i. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

ii. Status of power supply contracts, including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

d. Transmission:

i. Points of delivery: Provide the preferred point(s) of delivery on Western's system or a third-party's system and the required service voltage.

ii. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery.

e. Other Information:

The applicant may provide any other information pertinent to receiving an allocation.

f. Signature:

The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation.

C. Western's Consideration of Applications

1. When the APD is received by Western, Western will verify that the general eligibility criteria set forth in section II has been met, and that all items requested in the APD have been provided.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the information.

b. If Western determines that the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the general allocation criteria set forth in section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that (1) this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact on a substantial number of such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this Federal Register notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the Federal Register on October 12, 1995 (60 FR 53181). Western's NEPA review will assure all environmental effects related to these procedures have been analyzed.

IX. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued in Golden, Colorado, January 19, 1996.

J.M. Shafer,

Administrator.

[FR Doc. 96–1394 Filed 1–26–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5408–1]

Agency Information Collection Activities Under OMB Review; Measures of Success for Compliance Assistance Reporting Form

AGENCY: Environmental Protection Agency (EPA).

ACTION: None.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) Measures of Success for Compliance Assistance Reporting Form abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 28, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR. No. 1758.02.

SUPPLEMENTARY INFORMATION:

Title: Measures of Success for Compliance Assistance Reporting Form. (OMB Control No. XXXX–XXXX: EPA ICR No. 1758.02) This is a new collection.

Abstract: This will be a voluntary collection of program information on the accomplishments of state and regional compliance assistance programs. The information will be collected so that EPA can better understand the effectiveness of compliance assistance programs vis a vis enforcement programs and so that success stories can be shared between state programs. This is a voluntary information collection request. This information will be used by EPA's Office of Enforcement and Compliance Assurance (OECA) in order to evaluate the effectiveness of regional and state compliance assistance programs as a supplementary tool to traditional enforcement methods. EPA regions and state programs will also use the information to learn about other compliance assistance programs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on November 7, 1995, FR 56,148.

Burden Statement: The annual public reporting and record keeping burden for this collection of information for states is estimated to average 2 hours per response and for third-party respondents it will average 1 hour per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: state and small businesses

Estimated No. of Respondents: 3,286

Estimated Total Annual Burden of Respondents: 5,830

Frequency of Collection: Annually

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1758.02 and OMB Control No. XXXX–XXXX in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136) 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th St, NW., Washington, DC 20503.

Dated: January 11, 1996.

Joseph Retzer,

Regulatory Information Division.

[FR Doc. 96–1556 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5409–2]

Acid Rain Program: Notice of Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving 5-year Phase I Acid Rain permits or permit modifications including sulfur dioxide (SO_2) and/or nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76), for the following 21 utility plants: E C Gaston, Gadsden, Gorgas, and J.H. Miller in Alabama; Big Bend, Crist, Jack Watson, Lansing Smith, Scholz, and Victor J. Daniel in Florida; Arkwright, Harllee Branch, McIntosh, Mitchell, Port Wentworth, and Scherer in Georgia; Dunkirk and Roseton in New York; and Harrison, Rivesville, and Willow Island in West Virginia.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about a permit listed in this notice: for plants in Alabama, Florida, and Georgia, call Scott Davis, (404) 347–5014; for plants in New York, call Gerry DeGaetano, (212) 637–4020; and for plants in West Virginia, call Linda Miller, (215) 597–7547.

Dated: January 23, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–1547 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5409–3]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of the 1996 EPA SO_2 Allowance Auctions.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR Part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the fourth annual SO_2 allowance auctions. The regulations governing the auctions and sales were promulgated on December 17, 1991 (40 CFR Part 73, Subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulations cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1996 auctions will consist of one ''spot'' auction and two ''advance'' auctions. Allowances sold in the spot auction are useable for compliance beginning in 1996. Allowances sold in the 6-year advance auction are useable for compliance beginning in 2002; allowances sold in the 7-year advance auction are useable for compliance beginning in 2003. 25,000 allowances—the unsold allowances from the 1995 direct sale—will be sold in the 6-year advance auction, 150,000 allowances will be sold in the spot auction and 100,000 allowances will be sold in the 7-year advance auction. Bid Forms for the 1996 auctions must be received by the CBOT by the close of business on March 19, 1996. The auctions themselves will be conducted on March 25, 1996, with the results announced the next day.

All bids in previous auctions were required to be in whole dollars. Beginning with the March 1996 auctions, bids will be accepted in increments of $0.01.

CBOT will also sell in the 1996 auctions any spot, 6-year advance, or 7-year advance allowances that are offered by others holding allowances in EPA's Allowance Tracking System. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. However, under 40 CFR § 73.70, such offered allowances must have a minimum price in whole dollars. To offer allowances in the EPA auctions, owners of allowances must submit a SO_2 Allowance Offer Form to EPA by the close of business on March 1, 1996. The auction and sale regulations require that offer forms be received by EPA no later than 15 business days prior to the date of the auctions.

ADDRESSES:

U.S. EPA Acid Rain Division (6204J), Attn: Auctions and Sales, 401 M St., S.W., Washington, DC 20460.

Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., Suite 2240, Chicago, IL 60604.

Forms needed to participate in the EPA auctions are available from the Acid Rain Division. To obtain forms, call the Acid Rain Hotline at (202) 233–9620.

FOR FURTHER INFORMATION: Information on bidding in the 1996 EPA auctions can be found in the brochure ''How to Bid in the EPA SO_2 Allowance Auctions, Fourth Annual Auctions—March 25, 1996;'' general information on the EPA auctions can be found in the ''Acid Rain Program Allowance Auctions and Direct Sales'' fact sheet. These publications can be obtained by calling the Acid Rain Hotline, by writing to EPA at the address listed above, or by accessing the Acid Rain Program home page on the Internet at http://www.epa.gov/docs/acidrain/ardhome.html where additional information on the Acid Rain Program is also available.

Dated: January 19, 1996.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 96–1548 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5408–4]

Notice of Rechartering of the Local Government Advisory Committee

The Environmental Protection Agency's (EPA) Local Government Advisory Committee (LGAC) has been rechartered through December 31, 1997, as a necessary committee which is in the public interest, and in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of the LGAC is to provide authoritative analysis and advice to the EPA Administrator regarding how to achieve more effective and efficient implementation of Federal environmental programs by local governments. The Committee membership is balanced with representation from Local and State government officials, Congressional staff, environmental interest groups, and labor unions.

Dated: January 22, 1996.

Shelley H. Metzenbaum,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 96–1551 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5406–2]

Public Water Supply Supervision Program, Program Revision for the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas are revising their approved State Public Water Supply Supervision Primacy Program. These States have adopted drinking water regulations for Lead and Copper, and National Primary Drinking Water Regulation Implementation promulgated by EPA on June 7, 1991 (56 FR 26460). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by February 28, 1996 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 28, 1996, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 28, 1996.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, at the following offices:

Arkansas Department of Health, Engineering Division, 4815 West Markham Street, Little Rock, AR 72205

Louisiana Department of Health and Hospitals, Office of Public Health—Engineering, 325 Loyola Avenue, New Orleans, LA 70112

New Mexico Environment Department, Drinking Water Bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, NM 87502

Oklahoma Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, OK 73117

Texas Natural Resource Conservation Commission, Water Utilities Division, 12015 Park 35 Circle, Bldg F, Suite 3202, Austin, TX 78753

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra Jr., P.E., Chief, EPA, Region 6, Source Water Protection Branch, at the Dallas address given above; telephone (214) 665–7150.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: December 14, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–1552 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140241; FRL–4995–6]

Access to Confidential Business Information by Contractors; Extension of Contracts and Access to Confidential Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Due to the lack of authorized funding (i.e. a Fiscal Year 1996 Appropriations Bill or Continuing Resolution) and the resultant furlough of EPA employees, EPA is extending the contracts and access to confidential business information of four state agencies serving as contractors to EPA, the State of New York Department of Environmental Conservation (Contract Number 68-W5-0040), Illinois Environmental Protection Agency (Contract Number 68-W5-0039), Georgia Department of Natural Resources (Contract Number 68-W5-0038), and Wisconsin Department of Natural Resources (Contract Number 68-W5-0037).

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the fall of 1995, the State of New York Department of Environmental Conservation (Contract Number 68-W5-0040), Illinois Environmental Protection Agency (Contract Number 68-W5-0039), Georgia Department of Natural Resources (Contract Number 68-W5-0038), and Wisconsin Department of Natural Resources (Contract Number 68-W5-0037), each were retained as EPA contractors to review information directed to EPA under the authority of the Toxic Substances Control Act (TSCA), including confidential business information (CBI). The purpose of the contracts is to have the states determine the value of TSCA derived information to their respective toxics programs. By the terms of the contracts, access to TSCA CBI could be as long as 120 days after the date of contract commencement.

As a result of the furlough of EPA personnel and the closure of the Federal government for significant portions of the contract period, the state contractors were not able to access data or secure necessary Agency personnel assistance so as to adequately perform the contracts.

For this reason, the Agency has determined that access to TSCA CBI should be extended another 60 days, to insure that the state contractors have sufficient time to address the issue of the utility of TSCA data to state programs. Additional information may be secured from Scott Sherlock, the EPA staffer assigned to this project, at telephone number (202) 260-1536; e-mail: sherlock.scott@epamail.epa.gov.

List of Subjects

Environmental protection, Access to confidential businesss information.

Dated: January 23, 1996.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–1539 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5405–8]

Notice of Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the GE/Moreau Site, Moreau, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), relating to the GE/Moreau Site (the ''Site''), Moreau, Saratoga County, New York. This Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement (''Agreement''), is being entered into by EPA and the General Electric Company (the ''Respondent''). Under the Agreement, the Respondent shall pay EPA the sum of $600,000 in reimbursement of past response costs incurred by EPA with respect to the Site.

DATES: EPA will accept written comments relating to the proposed settlement for a period of thirty days from the date of publication of this notice.

ADDRESSES: Comments should reference the GE/Moreau Superfund Site and EPA Index No. II–CERCLA–95–0205. Comments and any requests for further information, including requests for a copy of the Agreement, should be sent to: Paul Simon, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Paul Simon at telephone: (212) 637–3172.

Dated: December 1, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–1555 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5409–1]

Proposed Settlement; J & A Enterprises Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the J & A Enterprises Site (Site) located in Huntsville, Alabama, with Ms. Addie Atkinson, owner/operator of the Site, J & A Enterprises Leasing, and J & A Finishing Corporation, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Programs Branch, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365; (404) 347–5059 ext. 6169.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: January 17, 1996.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 96–1549 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5404–4]

Notice of Proposed Administrative Settlement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Kin-Buc Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the United States Environmental Protection Agency (''EPA''), Region II announces an administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1) regarding the Kin-Buc Landfill Superfund Site (the ''Kin-Buc Site'').

The Kin-Buc Site is located in Edison Township, Middlesex County, New Jersey and is listed on the National Priorities List established under Section 105 of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate.

The administrative settlement would resolve the claims of the United States against I.S.A. In New Jersey, Inc. (''ISA'') and Round Lake Sanitation Corporation (''Round Lake'') with respect to their potential liability for past costs incurred by EPA pursuant to CERCLA in responding to the release and threatened release of hazardous substances at the Kin-Buc Site. The settlement is memorialized in an Administrative Cost-Recovery Agreement (''Agreement''). Under the Agreement, ISA and Round Lake are obligated to pay $5,000 to the Hazardous Substances Superfund. The payment is to be made from an escrow account established for ISA and Round Lake as stated below. The settlement is based on the ability to pay of ISA and Round Lake in that these corporations are defunct and have no assets other than the monies in escrow.

In 1991, ISA, Round Lake, and other entities and individuals were indicted by a grand jury empaneled in the United States District Court for the Southern District of New York on numerous federal felony charges. According to a subsequent plea agreement, the assets of ISA and Round Lake, and other entities, were required to be sold to unrelated third parties. In 1994, the United States entered into an Agreement and Covenant Not To Sue under CERCLA with Browning-Ferris Industries of New York, Inc.; Browning-Ferris Industries of Paterson, N.J., Inc.; and Browning-Ferris Industries of South Jersey, Inc. (collectively ''BFI'') regarding BFI's prospective purchase of the assets of ISA, Round Lake, and the other entities. BFI paid $250,000 to the United States for an Agreement and Covenant Not To Sue, of which $1,250 was allocated to the Kin-Buc Site, and the balance of which was allocated to three other Superfund sites: The Warwick Landfill

Superfund Site in Warwick, New York (the ''Warwick Site''), the Hertel Landfill Superfund Site in the Town of Plattekill, New York (the ''Hertel Site'') and the Ramapo Landfill Superfund Site in the Town of Ramapo, New York (the ''Ramapo Site''). BFI completed the acquisition of the assets of ISA, Round Lake, and the other entities and, in connection therewith, ISA and Round Lake deposited $1,000,000 of the sale price into an escrow account established to resolve certain liability to the United States pursuant to CERCLA at the Kin-Buc Site, the Warwick Site, the Hertel Site and the Ramapo Site. The balance of the proceeds of BFI's purchase of the assets of ISA, Round Lake, and the other entities was used to pay other obligations of ISA and Round Lake including $5,000,000 in criminal fines, forfeitures and costs, $3,500,000 in federal and state tax liability, and $300,000 of liabilities to other creditors.

The remedial action which has been selected at the Kin-Buc Site is being implemented by parties other than ISA or Round Lake. The bulk of EPA's past costs at the Kin-Buc Site have been recovered from parties other than ISA or Round Lake, and the remaining costs at the Kin-Buc Site may be recovered from parties other than ISA or Round Lake.

Pursuant to CERCLA Section 122(h)(1), the prior written approval of the Attorney General is required for the administrative settlement under CERCLA between EPA and ISA and Round Lake. In satisfaction of that requirement, the Attorney General or her designee has approved the proposed settlement in writing.

DATES: Comments must be submitted on or before February 28, 1996.

ADDRESSES: Comments should be addressed to the EPA at the address listed below, and should refer to ''Kin-Buc Landfill Superfund Site, EPA Index No. II CERCLA–95–0114''. Interested parties may contact the individual listed below to receive a copy of either or both administrative settlement agreements, or to make an appointment to examine either or both administrative settlement agreements at EPA Region II, 290 Broadway, New York, NY, 10007.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, NY/Caribbean Superfund Branch, Office of Regional Counsel, Environmental Protection Agency, 290 Broadway, New York, N.Y. 10007, telephone: (212) 637–3168.

Dated: November 30, 1995.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 96–1464 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5404–2]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; in re: Industri-Plex Superfund Site; Woburn, MA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Michael Vining and David Vining, individually, David Vining as trustee of 20 Atlantic Avenue Realty Trust, and Atlantic Packaging, Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Industri-Plex Superfund Site in Woburn, Massachusetts.

DATES: Comments must be provided on or before February 28, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: In re: David Vining as trustee of 20 Atlantic Realty Trust, Woburn, Massachusetts, U.S. EPA Docket No. CERCLA–I–96–1010.

FOR FURTHER INFORMATION CONTACT: Daniel H. Winograd, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.*, notice is hereby given of a proposed prospective purchaser agreement concerning the Industri-Plex Superfund Site in Woburn, MA. The settlement was approved by EPA Region I on December 12, 1995, subject to review by the public pursuant to this Notice. Michael Vining and David Vining, individually, David Vining as trustee of 20 Atlantic Avenue Realty Trust, and Atlantic Packaging, Inc., collectively the Settling Respondent, have executed a signature page committing them to participate in the settlement. Under the proposed settlement, the Settling Respondent is required to pay $30,000 to the Hazardous Substances Superfund, to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice will have approved this settlement in writing prior to the agreement becoming effective. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Daniel H. Winograd, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–96–1010).

Dated: December 13, 1995.

John DeVillars,

Regional Administrator.

[FR Doc. 96–1541 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5404–1]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the Kansas City Structural Steel Site located in Wyandotte County Kansas was executed by the Agency on October 25, 1995 and executed by the United States Department of Justice on November 29, 1995. This agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), against ECI Development Corporation, the prospective purchaser (''the purchaser'').

The settlement would require the purchaser to perform operation and maintenance actions at the property which includes maintaining the protective cover over potentially contaminated soil on site. The purchaser must comply with the institutional controls selected by the EPA and must provide EPA access to the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before [date].

AVAILABILITY: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Anne McCauley, Remedial Project Manager, U.S. environmental Protection Agency, Region VII, 25 Funston Road, Kansas City, Kansas 66115. Comments should reference the ''Kansas City Structural Steel Superfund Site Prospective Purchaser Agreement'' and should be forwarded to Anne McCauley, Remedial Project Manager, at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene M. Munk, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7807.

Dated: December 12, 1995.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 96–1400 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5404–3]

Notice of Proposed Administrative Settlement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Ramapo Landfill Superfund Site

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of proposed administrative settlements and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the United States Environmental Protection Agency (''EPA''), Region II announces a proposed administrative settlement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1) regarding the Ramapo Landfill Superfund Site (the ''Ramapo Site'').

The Ramapo Site is located in the Town of Ramapo, Rockland County, New York, and is listed on the National Priorities List established under Section 105 of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate.

The administrative settlement would resolve the claims of the United States against I.S.A. In New Jersey, Inc. (''ISA'') and Round Lake Sanitation Corporation (''Round Lake'') with respect to their potential liability for past costs incurred by EPA pursuant to CERCLA in responding to the release and threatened release of hazardous substances at the Ramapo Site. The settlement is memorialized in an Administrative Cost-Recovery Agreement (''Agreement''). Under the Agreement, ISA and Round Lake are obligated to pay $25,000 to the Hazardous Substances Superfund. The payment is to be made from an escrow account established for ISA and Round Lake as stated below. The settlement is based on the ability to pay of ISA and Round Lake in that these corporations are defunct and have no assets other than the monies in escrow.

In 1991, ISA, Round Lake, and other entities and individuals were indicted by a grand jury empaneled in the United States District Court for the Southern District of New York on numerous federal felony charges. According to a subsequent plea agreement, the assets of ISA and Round Lake, and other entities, were required to be sold to unrelated third parties. In 1994, the United States entered into an Agreement and Covenant Not To Sue under CERCLA with Browning-Ferris Industries of New York, Inc.; Browning-Ferris Industries of Paterson, N.J., Inc.; and Browning-Ferris Industries of South Jersey, Inc. (collectively ''BFI'') regarding BFI's prospective purchase of the assets of ISA, Round Lake, and the other entities. BFI paid $250,000 to the United States for an Agreement and Covenant Not To Sue, of which $5,000 was allocated to the Ramapo Site, and the balance of which was allocated to three other Superfund sites: the Warwick Landfill Superfund Site in Warwick, New York (the ''Warwick Site'') the Hertel Landfill Superfund Site in the Town of Plattekill, New York (the ''Hertel Site'') and the Kin-Buc Landfill Superfund Site in Edison Township, New Jersey (the ''Kin-Buc Site''). BFI completed the acquisition of the assets of ISA, Round Lake, and the other entities and, in connection therewith, ISA and Round Lake deposited $1,000,000 of the sale price into an escrow account established to resolve certain liability to the United States pursuant to CERCLA at the Ramapo Site, the Warwick Site, the Hertel Site and the Kin-Buc Site. The balance of the proceeds of BFI's purchase of the assets of ISA, Round Lake, and the other entities was used to pay other obligations of ISA and Round Lake including $5,000,000 in criminal fines, forfeitures and costs, $3,500,000 in federal and state tax liability, and $300,000 of liabilities to other creditors.

The remedial action which has been selected at the Ramapo Site is being implemented by a party other than ISA or Round Lake and the remaining costs at the Ramapo Site may be recovered from parties other than ISA or Round Lake.

Pursuant to CERCLA Section 122(h)(1), the prior written approval of the Attorney General is required for the administrative settlement under CERCLA between EPA and ISA and Round Lake. In satisfaction of that requirement, the Attorney General or

her designee has approved the proposed settlement in writing.

DATES: Comments must be submitted on or before February 28, 1996.

ADDRESSES: Comments should be addressed to the EPA at the address listed below, and should refer to ''Ramapo Landfill Superfund Site, EPA Index No. II CERCLA–95–0214.'' Interested parties may contact the individual listed below to receive a copy of the administrative settlement agreement, or to make an appointment to examine the administrative settlement agreement at EPA Region II, 290 Broadway, New York, NY, 10007.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, NY/Caribbean Superfund Branch, Office of Regional Counsel, Environmental Protection Agency, 290 Broadway, New York, N.Y. 10007, telephone: (212) 637–3168.

Dated: November 29, 1996.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 96–1463 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5405–9]

Notice of Proposed Administrative De Minimis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Sidney Landfill Site, Towns of Masonville and Sidney, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Sidney Landfill Site (''Site'') in the Towns of Masonville and Sidney, Delaware County, New York. This Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Order on Consent (''Order''), is being entered into by EPA and Ellinwood Auto Parts, Inc.; A & P Disposal Service, Inc.; and Keith Clark (a Division of Cullman Ventures, Inc.) (collectively, the ''Respondents''). The Respondents contributed a minimal amount of hazardous substances to the Site and are eligible for a *de minimis* settlement under Section 122(g) of CERCLA. Under the Order, the Respondents shall pay EPA amounts totalling $9,380.75, toward the costs of the response actions that have been and will be conducted with respect to the Site.

DATES: EPA will accept written comments relating to the proposed settlement on or before February 28, 1996.

ADDRESSES: Comments should be sent to the individual listed below. Comments should reference the Sidney Landfill Site and EPA Index No. II–CERCLA–95–0215. For a copy of the Order, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Farah Khakee, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3248.

Dated: December 7, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–1544 Filed 1–26–96; 8:45 am]

BILLING CODE 6560–50–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Annual notice of systems of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on five previously-noticed systems of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Board currently maintains five systems of records under the Privacy Act. Each system is described below.

DNFSB–1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;
(2) Records of security education and foreign travel lectures;
(3) Records of any security infractions;
(4) Names of individuals visiting DNFSB;
(5) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE—to determine eligibility for security clearances.

Other Federal and State agencies—to determine eligibility for security clearances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF–86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–2

SYSTEM NAME:

Administrative and Travel Files

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;
(2) Payroll actions and deduction information requests;
(3) Authorizations for overtime and night differential;
(4) Credit cards and telephone calling cards issued to individuals;
(5) Destination, itinerary, mode and purpose of travel;
(6) Date(s) of travel and all expenses;
(7) Passport number;
(8) Requests for advance of funds, and voucher with receipts;
(9) Travel authorizations;
(10) Name, address, social security number and birth date;
(11) Employee parking permits;
(12) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Government—To process state and local income tax.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Finance and Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORDS ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–3

SYSTEM NAME:

Drug Testing Program Records-DNFSB.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary System: Division of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004–2901. Duplicate Systems Duplicate systems may exist, in whole or in part, at contractor testing laboratories and collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees and applicants for employment with the DNFSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding results of the drug testing program; requests for and results of initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to postive test results; information supplied by individuals concerning alleged drug abuse by Board employees or contractors; and written statements or medical evaluations of attending physicians and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive Order 12564; September 15, 1986.

(2) Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100–71, 101 Stat. 391, 468–471, codified at 5 U.S.C. section 7301 note (1987).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used by the DNFSB management:

(1) To identify substance abusers within the agency;
(2) To initiate counseling and rehabilitation programs;
(3) To take personnel actions;
(4) To take personnel security actions; and
(5) For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders. Additionally, records used for initiating a random drug test are maintained on the Random Employee Selection Automation System. This is a stand-alone system resident on a desktop computer and is password-protected.

RETRIEVABILITY:

Records maintained in file folders are indexed and accessed by name and social security number. Records maintained for random drug testing are accessed by using a computer data base which contains employees' names, social security numbers, and job titles. Employees are then selected from the available pool by the computer, and a list is given to the Drug Program Coordinator of employees and alternates selected for drug testing.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Human Resources are store in an approved security container under the immediate control of the Director, Division of Human Resources, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

(1) Test results, whether negative or positive, and other drug screening records filed in the Division of Human Resources will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions provided by the Division of Human Resources, the results will be transferred to the Division of Human Resources when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Human Resources will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(3) Negative specimens will be destroyed according to laboratory/contractor procedures.

(4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings.

SYSTEM MANAGERS AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Human Resources.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–3 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees or contractors; DNFSB contractors of processing, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Purusant to 5 U.S.C. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(C), (H), and (J), and (f). The exemption is invoked for information in the system of records

which would disclose the identify of a person who has supplied information on drug abuse by a Board employee or contractor.

DNFSB–4

SYSTEM NAME:

Personnel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning the following information:

(1) Name, social security number, sex, date of birth, home address, grade level, and occupational code
(2) Official Personnel Folders (SF–66), Service Record Cards (SF–7), and SF–171
(3) Records on suggestions, awards, and bonuses.
(4) Training requests, authorization data, and training course evaluations
(5) Employee appraisals, appeals, grievances, and complaints
(6) Employee disciplinary actions
(7) Employee retirement records
(8) Records on employment transfer
(9) Applications for employment with the DNFSB

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

GSA—Maintains official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with, security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGERS AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, Attention: Director of Human Resources.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–4 contains information about him/her should be directed to Director of Human Resources, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–5

SYSTEM NAME:

Personnel Radiation Exposure Files.

SECURITY CLASSIFICATION:

Unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004–2901.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees, contractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel folders containing radiation exposure and whole body count, including any records of mandatory training associated with site work or visits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended by Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

DNFSB—to monitor radiation exposure of its employees and contractors.

DOE—to monitor radiation exposure of visitors to the various DOE facilities in the United States.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the ''General Records Schedules'' published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite

700, Washington, DC 20004–2901. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB-5 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, previous employee records, DOE contractors' film badges, whole body counts, bioassays and dosimetry badges.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: January 22, 1996.

John T. Conway,

Chairman.

[FR Doc. 96–1460 Filed 1–26–96; 8:45 am]

BILLING CODE 3670–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being reviewed by FCC, Comments Requested

January 22, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC 854.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; state or local governments.

Number of Responses: 43,000.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 21,500 hours.

Needs and Uses: Section 303(q) of the Communications Act authorizes the Commission to require the painting and/or illumination of radio towers if and when in its judgement such towers constitute, or there is a reasonable possibility that they may constitute, a hazard to air navigation. This FCC form is to be used for the purpose of registering structures used for wire or radio communication services within the United States, or to make changes to an existing registered structure, or to notify the Commmission of the dismantlement of a structure. The Commission staff will evaluate the antenna data submitted by the tower owner and determine if Part 17 rule requirements are met and if any obstruction painting and/or lighting will be necessary. The tower owner will receive notification that the Commission has registered the structure, modification or dismantlement on FCC Form 854R, Antenna Structure Registration. Owners of new and modified towers must notify the Commission within 24 hours of construction completion and/or disposition of structure, using a portion of the FCC Form 854R which is detachable.

The data collected is required by the Communications Act of 1934, as amended; FCC Rules Section 1.61(a), 17.4, 21.11(g),25.113(c), 73.3533(c), 74.551(c), 74.651(d), 74.1251(d), 78.109(c), 95.83(a)(3), 97.15(d).

OMB Approval Number: 3060–0386.

Title: Section 73.1635 Special Temporary Authorizations (STA).

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Responses: 2,580.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 10,320 hours.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

OMB Approval No.: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form No.: FCC 316.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for Profit.

Number of Respondents: 1,575.

Estimated Time per Response: 3 hours 15 minutes.

Total Annual Burden: 5,119.

Needs and Uses: Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of corporation holding broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; and where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder. The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–1499 Filed 1–26–96; 8:45 am]
BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 22, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before March 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0084.
Title: Report of Noncommercial Educational Broadcast Station.
Form No.: FCC 323–E.
Type of Review: Extension of a currently approved collection.
Respondents: Not-for-profit institutions.
Number of Respondents: 695.
Estimated Time Per Response: 4 hours.
Total Annual Burden: 2,780 hours.
Needs and Uses: Each licensee/permittee of a noncommercial AM, FM and TV station is required to file an FCC Form 323-E within 30 days of the date of grant by the FCC of an application for original construction permit and after any changes occur in the information called for in the form; and in conjunction with the renewal application. Licensees with current unamended Ownership Reports on file at the Commission may so indicate on their renewal applications and be relieved of the obligation to file a new Ownership Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–1500 Filed 1–26–96; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Approved by Office of Management and Budget

January 22, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0682.
Expiration Date: 01/31/99.
Title: Construction of Stand-Alone Cable System by a Carrier in its Exchange Telephone Service Area—Section 63.16, CC Docket No. 87–266.
Estimated Annual Burden: 50 total annual hours; average 1 hour per respondent; 50 respondents.
Description: 47 U.S.C. 214 requires telephone companies to secure certification from the Federal Communications Commission (FCC) before the construction of any ''line'' used in interstate communication. To enable the FCC to evaluate whether such a construction is in the public interest, carriers have been required to provide detailed support when requesting Section 214 authorizations. 47 CFR Section 63.16 permits most carriers who can certify that they meet three conditions to secure such authorization for providing service in their local service areas without providing such detailed support.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–1501 Filed 1–26–96; 8:45 am]
BILLING CODE 6712–01–F

[DA 96–52]

Commission To Reschedule En Banc Hearing on Spectrum Policy

Released: January 22, 1996

The Federal Communications Commission has changed the date of the en banc hearing on spectrum policy and management. The original hearing date of January 31, 1996 was announced in a Public Notice released December 15, 1995. The new hearing date is March 5, 1996.

Parties who have not yet submitted letters of interest and would like to be considered for an invitation as panelists may submit letters of interest by 5:30 p.m. January 26, 1996 to: Amy Lesch, Office of Plans and Policy, Federal Communications Commission, 1919 M Street, Room 822, Washington, D.C. 20554, fax (202) 418–2807, tel (202) 418–2049.

Letters of interest must clearly identify the speaker, organization represented (if any), relevant experience and training and the specific topic(s) he/she wishes to discuss. We will select speakers for the hearings in order to achieve broad representation of viewpoints. The Commission may select panelists who have not submitted a request to appear and address subjects related to but not specifically included in the notice released December 15, 1995.

The precise format and schedule for the en banc hearing, as well as a list of the selected presenters, will be specified in a future public notice. Presenters will be asked to submit written remarks; to make an oral presentation to the Commission which will be limited to no more than three minutes; and to respond to questions of the Commissioners.

Persons selected to appear will be required to submit to the Secretary, by close of business February 20, 1996, an original and 9 copies of their proposed remarks, a summary of those remarks of no more than one page, a brief speaker biography, and a description of the organization represented. In addition, 10 copies of the material submitted to the Secretary must be submitted to Amy Lesch, Office of Plans and Policy by close of business on February 20, 1996. Persons wishing to respond to testimony presented at the hearing are invited to do so by the reply comment deadline, March 26, 1996.

For more information contact Amy Lesch, Office of Plans and Policy at (202) 418–2049 or Steve Sharkey, Office of Engineering Technology, (202) 418–2404. Members of the media should contact Maureen Peratino, Office of Public Affairs, (202) 418–0500.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–1502 Filed 1–26–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Regions Financial Corporation, 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 22, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with First Gwinnett Bancshares, Inc., Norcross, Georgia, and thereby indirectly acquire First Gwinnett Bank, Norcross, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Waunakee Employee Stock Ownership Plan, Waunakee, Wisconsin; to acquire 45.70 percent of the voting shares of Waunakee Bank Shares, Inc., Waunakee, Wisconsin, and thereby indirectly acquire Bank of Waunakee, Waunakee, Wisconsin.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Executive Bancshares, Inc., Paris, Texas; to acquire 100 percent of the voting shares of Collin County National Bank, McKinney, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–1490 Filed 1–26–96; 8:45 am]

BILLING CODE 6210–01–F

Regions Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 12, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire First Federal Bank of Northwest Georgia, Federal Savings Bank, Cedartown, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas; to acquire Mutual Money Investments, Inc. (doing business as Tri-Star Financial), Houston, Texas, and thereby engage in providing investment or financial advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; in providing to others data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y; and in providing securities brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–1491 Filed 1–26–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951–0059]

RxCare of Tennessee, Inc; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would bar the leading provider of pharmacy network services in Tennessee from having ''most favored nation'' clauses in its pharmacy participation agreements. The draft complaint accompanying the consent agreement alleges that RxCare's use of these clauses discourages the pharmacies from discounting and thereby limits price competition among the pharmacies in their dealings with pharmacy benefits managers and third-party payers.

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

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary Room 159, 6th St. and Pa Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael D. McNeely, Federal Trade Commission, S–3231, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of RxCare of Tennessee, Inc. (''RXCare''), and its parent, the Tennessee Pharmacists Association (''TPA''), and it now appearing that RXCare and TPA, hereinafter sometimes referred to as ''proposed respondents,'' are willing to enter into an agreement containing an Order to remedy the alleged lessening of competition resulting from proposed respondents' practices and providing for other relief:

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent RxCare is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at 1226 17th Avenue South, Nashville, Tennessee 37212.

2. Proposed respondent TPA is an unincorporated trade association organized, existing, and doing business under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at 226 Capitol Blvd., Suite 810, Nashville, Tennessee 37219–1893.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the draft of complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered That the following definitions shall apply herein:

A. ''RxCare'' means RxCare of Tennessee, Inc.; its predecessors, divisions, subsidiaries, affiliates, joint ventures, successors, and assigns; and all directors, officers, employees, agents, and representatives of the foregoing;

B. ''TPA'' means the Tennessee Pharmacists Association; its predecessors, divisions, subsidiaries, affiliates, joint ventures, successors, and assigns; and all directors, officers, employees, agents, and representatives of the foregoing;

C. ''Third-party payer'' means any person or entity that provides a program or plan pursuant to which such person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in the plan or program as eligible for coverage (''coveraged

persons'') and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; and health benefits programs for government employees, retirees and dependents;

D. ''Participation agreement'' means any existing or proposed agreement, oral or written, in which a third-party payer, prescription benefit manager (PBM), pharmacy service administrative organization (PSAO), or other firm agrees to reimburse a pharmacy firm for the dispensing of prescription drugs to covered persons, and the pharmacy firm agrees to accept such payment from the third-party payer, PMB, PSAO, or other firm for such prescriptions dispensed during the term of the agreement;

E. ''Pharmacy firm'' means any partnership, sole proprietorship, corporation, or other entity that owns, controls or operates one or more pharmacies; and

F. ''Most Favored Nations Clause'' or ''MFN'' means any agreement, understanding, or course of dealing between RxCare or TPA and any pharmacy firm under which, in the event the pharmacy firm accepts or agrees to accept from another third party payer, PBM, PSAO or other firm a lower reimbursement rate than the lowest RxCare reimbursement rate, the pharmacy firm must thereafter accept a reduction in its reimbursement rate for any or all RxCare contracts in which it participates. The term ''Most Favored Nations Clause'' includes, but is not limited to, any price protection clause, buyer protection clause, prudent buyer clause, consumer protection clause, meet or release clause, best price clause, or meeting competition clause.

II

It is further ordered That RxCare and TPA shall forthwith cease and desist, directly or indirectly, from:

A. Entering into, maintaining, or enforcing a Most Favored Nations Clause in any participation agreement with any pharmacy firm or by any other means or methods;

B. Auditing any pharmacy firm for the purpose of enforcing a Most Favored Nations Clause; or

C. Inducing, suggesting, urging, encouraging, or assisting any person or entity to take any action that if taken by RxCare or TPA would violate this order.

III

It is further ordered That RxCare shall, within thirty (30) days after the date this Order becomes final:

A. Remove all Most Favored Nations Clauses from its agreements with pharmacy firms;

B. Distribute a copy of this Order, the attached Appendix, and the complaint to each pharmacy firm with which RxCare has a participation agreement; and

C. Publish the Appendix to this Order in the RxCare Update and on the ''RxCare Network News'' page of the Tennessee Pharmacist, or any successor publication(s).

IV

It is further ordered That, for the purpose of determining or securing compliance with this Order, RxCare and TPA each shall:

A. Within sixty (60) days after the date this Order becomes final, submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order;

B. One year (1) from the date this Order becomes final, annually for the next four (4) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order. Respondents shall include in their compliance reports all written communications, internal memoranda, and reports and recommendations concerning compliance with this Order;

C. For a period of ten (10) years after the date this Order becomes final, permit any duly authorized representative of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this Order; and

2. Upon five days' notice to respondents and without restraint or interference from it, to interview officers, directors, or employees of respondents; and

D. For a period of ten (10) years after the date this Order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in TPA or RxCare such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is further ordered That this Order shall terminate twenty (20) years from the date this Order becomes final.

Appendix

[Date]

Announcement

The Tennessee pharmacists Association (TPA) and RxCare of Tennessee, Inc. (RxCare), have entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued a consent order on [Date] providing that RxCare and TPA may no longer enforce a most Favored Nations (MFN) clause in the RxCare network provider agreements. The MFN clause requires that if a participating pharmacy accepts a lower reimbursement rate than the lowest RxCare rate, the pharmacy shall accept its lower reimbursement rate for all RxCare contracts in which it participates. As a result of the consent order, RxCare will not require that pharmacies in its network that enter into any agreement at a lower reimbursement rate than the RxCare reimbursement rate shall accept such lower reimbursement rat for RxCare contracts.

For more specific information, TPA or RxCare pharmacy network members should refer to the FTC consent order itself. TPA and RxCare will provide a copy of the consent order to each pharmacy firm with which RxCare has a participation agreement.

Baeteena Black,

Pharm. D., Executive Director, Tennessee Pharmacists Association.

Gary Cripps,

Pharm. D., Chairman and President, RxCare of Tennessee, Inc.

RxCare, 951 0059

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has agreed to accept, subject to final approval, a proposed consent order settling charges that RxCare of Tennessee, Inc., and the Tennessee Pharmacists Association (TPA) violated Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, nor to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by RxCare or TPA that the law has been violated as alleged in the complaint.

Description of Complaint

The complaint prepared by the Commission for issuance along with the proposed order alleges the following:

TPA is the largest association of pharmacists in Tennessee. Among TPA's goals is to ''define and promote appropriate compensation to pharmacists for patient care.'' TPA owns RxCare.

RxCare is a pharmacy network, *i.e.,* a group of pharmacies that offer their services to pharmacy benefit managers (PBMs) and to third-party payers (such as managed care plans, insurers, and employers who pay for prescription drugs provided as part of employee health benefit plans). Third-party payers pay for about half of all prescriptions in Tennessee.

The complaint further alleges that RxCare is the leading pharmacy network in Tennessee, providing PBM and/or network services to managed care plans and PMBs accounting for approximately 2.4 million residents of Tennessee, who represent more than half of Tennessee citizens with third-party pharmacy benefits. Because the RxCare network is the largest source of third-party business for Tennessee pharmacies, there is a strong incentive for those pharmacies to participate in the RxCare network. The RxCare network includes approximately 95% of Tennessee pharmacies.

According to the Commission's complaint, RxCare's agreements with the pharmacies in its provider network include a ''most favored nation'' or ''MFN'' clause. This clause requires that if a network pharmacy accepts a reimbursement rate lower than its RxCare reimbursement rate, the pharmacy shall accept the lower reimbursement rate for all RxCare business. Each pharmacy in the RxCare network agrees to this clause as a condition of remaining within the network and RxCare enforces this clause against pharmacies that have accepted lower reimbursement rates from other payers. In addition, RxCare has discouraged pharmacies from participating in rival networks seeking to offer prices below the RxCare reimbursement level. RxCare did so by urging pharmacies to refrain from such participation and by warning that acceptance of such rates could trigger the MFN clause.

The complaint further alleges that, because RxCare represents such a large portion of their business, most Tennessee pharmacies would incur an unacceptable revenue loss if violating the MFN clause caused them to accept reduced reimbursement rates on all of their RxCare business. Thus, the MFN clause has provided a mechanism to diminish significantly the incentives of RxCare network pharmacies to discount their rates to third-party payers seeking to offer network services with lower reimbursement rates. The MFN clause has also enabled the pharmacies to assure each other that they will not compete by selectively discounting their rates. Further, the complaint alleges that third-party payers in states other than Tennessee frequently offer reimbursement rates below the RxCare reimbursement rate and that the MFN clause has caused payers to pay higher rates in Tennessee than in other states.

The complaint alleges that RxCare's adoption and enforcement of the MFN clause has injured consumers by restricting price competition among pharmacies in Tennessee, effectively establishing the RxCare network rate as a price floor for most Tennessee pharmacies and inhibiting the entry of lower-priced pharmacy networks.

There are judicial decisions upholding the use of MFN clauses against antitrust challenges. See, *e.g., Blue Cross and Blue Shield United of Wisconsin* v. *Marshfield Clinic,* 65 F.3d 1406 (7th Cir. 1995); *Ocean State Physicians Health Plan, Inc.* v. *Blue Cross and Blue Shield of Rhode Island,* 883 F.2d 1101 (1st Cir. 1989), *cert. denied,* 494 U.S. 1027 (1990). The Commission notes that these cases rest on facts that differ significantly from those giving rise to this enforcement action. *Cf. Marshfield,* 65 F.3d at 1415 (''Perhaps * * * these clauses are misused to anticompetitive ends in some cases; but there is no evidence of that in this case''). In particular, the conduct challenged in the present enforcement action involved a combination of competing sellers using its market power to stabilize prices.

In *Ocean State,* the First Circuit Court of Appeals rejected a rival HMO's claim that Blue Cross and Blue Shield of Rhode Island violated Section 2 of the Sherman Act by requiring its participating physicians to adhere to a MFN clause. The court concluded that the MFN clause was not unreasonably exclusionary, despite the finding that Blue Cross possessed market power. *Ocean State,* 883 F.2d at 1110. The court in *Ocean State* reasoned that a health insurer's unilateral decisions about what it will pay providers do not violate the Sherman Act and stated that Blue Cross, ''like any buyer of goods or services,'' may lawfully ''bargain with its providers for the best price it can get.'' *Id.* at 1111.

In *Marshfield,* defendant Marshfield Clinic (a multi-specialty medical group practice) required independent physicians contracting with its subsidiary HMO to adhere to a MFN clause. The Seventh Circuit Court of Appeals, in holding that the Clinic's use of the MFN clause did not violate Section 1 of the Sherman Act, appears to have focused on the Clinic's role as a purchaser of physician services and found no evidence to warrant the conclusion that the MFN clause was used as a device to stabilize prices. 65 F.3d at 1415 (MFN clauses ''are standard devices by which buyers try to bargain for low prices * * *. The Clinic did this to minimize the cost of physicians to it * * *.''). In addition, the court concluded that the Clinic's HMO lacked market power, finding that less than 50 percent of physicians in the market were HMO providers and that the HMO did not represent enough of each physician's business to impede selective discounting. *Id.* at 1411 (''The 900 independent contractors derive only a small fraction of their income from these [Marshfield] contracts'').

In the present case, however, the Commission found reason to believe that a group of competing sellers exercised market power through use of an MFN clause, and that the evidence, analyzed under a full rule-of-reason inquiry, demonstrated that the RxCare MFN clause, on balance, has harmed consumers. In particular, the Commission found reason to believe that:

The MFN clause, in conjunction with the high percentage of Tennessee pharmacies' participation in the RxCare network and the substantial amount of third-party business arising from participation in that network, has made it possible for RxCare to exercise market power. Under these conditions, the MFN clause effectively created a price floor by discouraging discounting. In addition, RxCare sought to use the MFN clause to stabilize prices. For example, RxCare sought to persuade payers to increase their reimbursement rates to the RxCare level. The evidence, as a whole, was sufficient to demonstrate that the anticompetitive effects of the MFN clause outweighed any potential efficiencies.

Description of the Proposed Consent Order

The proposed order would prohibit RxCare and TPA from entering into, maintaining, or enforcing any MFN clause, including auditing any pharmacy for the purpose of enforcing an MFN clause.

The proposed order would require RxCare to remove all MFN clauses from its contracts with pharmacies, to distribute the order and accompanying complaint to network pharmacies, and publish the order and related documents. The order would also require RxCare and TPA to file compliance reports, retain certain documents, and notify the Commission of certain changes in its corporate structure.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in RxCare of Tennessee, Inc., File No. 951–0059

I join in the Commission's decision to accept for public comment a consent order requiring the Tennessee Pharmacists Association (''TPA''), a trade association of pharmacists, and its affiliated provider of pharmacy network services, RxCare of Tennessee, Inc., to eliminate the most favored nation clause from its provider network contracts. I write separately to emphasize that this order does not call into question the general lawfulness of most favored nation clauses.[1] Although most favored nation clauses usually raise no competitive concerns, in this case, the clause was used in furtherance of a horizontal agreement to stabilize the reimbursement rates for retail pharmacy services, as alleged in paragraph eight of the complaint.

Statement of Commissioner Christine A. Varney in the Matter of RxCare, File No. 951–0059

RxCare, a pharmacy network established and owned by the Tennessee Pharmacists Association, contracts with health plans to provide prescription drugs to the plans' subscribers. I have voted to issue the complaint and accept the consent order in this matter because I agree that the most favored nations clause, in this case, may have

[1] Although this point, among others, is made in the Analysis To Aid Public Comment, I express no opinion on that analysis, which by its own terms ''is not intended to constitute an official interpretation'' of the Commission's action.

lessened competition. But, in doing so, I want to emphasize that joint ventures by retail pharmacists can be precompetitive by injecting new competition into the market for pharmacy benefit management services.[2] I believe many of RxCare's programs can be procompetitive. The matter before the FTC concerns only one aspect of RxCare's pharmacy benefit management programs—its imposition of a most favored nations clause. By working on an expedited basis, staff has been able to identify this concern quickly and, by working closely with RxCare, has resolved it in a mutually agreeable fashion.

[FR Doc. 96–1497 Filed 1–28–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product and Establishment License Applications, Refusal to File; Meeting of Oversight Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing cancellation of the meeting for January 1996 of its standing oversight committee (the committee) in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's) and establishment applications (ELA's). The meeting is being cancelled because there were no RTF actions taken by CBER in the previous quarter. CBER's RTF oversight committee examines all RTF decisions which occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting scheduled for January 1996 is cancelled. The next meeting is scheduled for April 1996.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–2), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0372.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 15, 1995 (60 FR 25920), FDA announced the establishment of a standing oversight committee in CBER to conduct periodic reviews of CBER's use of its RTF practices on PLA's and ELA's. The May 15 notice stated that the committee meetings would be held quarterly to review all of the RTF decisions. The January 1996 committee meeting is being cancelled because there were no RTF actions taken by CBER in the previous quarter.

Dated: January 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–1513 Filed 1–26–96; 8:45 am]

BILLING CODE 4160–01–F

[2] See Prepared Remarks of Christine A. Varney, ''Responses to the Managed Care Revolution: A Competition Policy Perspective,'' Conference of the National Ass'n of Retail Druggists, March 27, 1995.

National Institutes of Health

''Infant Sleep Position and Sudden Infant Death Syndrome (SIDS) Risk'' Study; Proposed Data Collection

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH) is publishing this notice to solicit public comment on the data collection proposed for the study on ''Infant Sleep Position and SIDS Risk'' for the Pregnancy and Perinatology Program. To request copies of the data collection plans and instruments, call Dr. Marian Willinger, (301) 496–5575 (not a toll-free number).

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has a practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Written comments are requested within 60 days of the publication of this notice. Send comments to Dr. Marian Willinger, Pregnancy and Perinatology Branch, Center for Research for Mothers and Children (CRMC), NICHD, NIH, Building 6100, Room 4B11H, 6100 Executive Boulevard, Bethesda, MD 20852.

Proposed Project

The Center for Research for Mothers and Children intends to conduct the study for ''Infant Sleep Position and SIDS Risk.'' The CRMC is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 U.S.C. 288) as amended by the NIH Revitalization Act of 1993 (Pub. L. 103–43).

The information proposed for collection will be used by the NICHD to study if there is any correlation between the events occurring prior to death for infants who died of SIDS or their parents to determine the causes of SIDS.

The annual burden estimates are as follows:

Case type	Est. total cases	Est. No. of responses	Avg. hours required for total responses
SIDS	600	480	1
Controls	1200	960	1

Dated: January 19, 1996.

Benjamin E. Fulton,

Executive Officer, NICHD.

[FR Doc. 96–1448 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, as amended, notice is hereby given of the thirty-second meeting of the Fogarty International Center (FIC) Advisory Board, February 6, 1996, in the Lawton Chiles International House (Building 16) at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. In addition to a report by the Director, FIC, the agenda will focus on the status of FIC programs and plans.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, as amended, the meeting will be closed to the public from 11:00 a.m. to adjournment for the review of applications for awards under the Senior International Fellowship Program and the International Research Fellowship Program; and the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, MD 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

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 funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program)

Dated: January 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1447 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute National Cancer Advisory Board (NCAB) Activities and Agenda Subcommittee.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meeting and a roster of the subcommittee members upon request.

Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting. Attendance by the public will be limited to space available.

Committee Name: NCAB Activities and Agenda Subcommittee.

Date: January 30, 1996.

Place: National Cancer Institute, Via telephone conference, 6130 Executive Blvd. EPN, Conference Rm. 640, Rockville, MD 20852.

Open: 1 p.m. to 2:30 p.m.

Agenda: Discussion of future NCAB agenda items and other topics of interest, future of possible mini-symposia, periodic information updates, and organization of NCAB meetings and subcommittee meetings.

Closed: 2:30 p.m. to 4 p.m.

Agenda: Discussion of the participation of individual employees in support of NCAB activities.

Contact Person: Marvin R. Kalt, Ph.D., National Cancer Institute, 6130 Executive Blvd., EPN, Conference Rm. 640, Rockville, MD 20852, Telephone: 301–496–5147.

The meeting will be closed in accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S.C. The discussions could reveal personal information including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is appearing less than 15 days before the scheduled meeting due to the partial shutdown of the Federal Government.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1642 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee.

Date: February 22–23, 1996.

Time: 8 a.m.–5:30 p.m., February 22; 8 a.m.–adjournment, February 23.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: January 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1446 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Services Research Review Committee.

Date: February 6–February 7, 1996.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

Committee Name: Mental Disorders of Aging Review Committee.

Date: February 8–February 9, 1996.

Time: 9 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

Committee Name: Health Behavior and Prevention Review Committee.

Date: February 12–February 13, 1996.

Time: 9 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Monica F. Woodfork, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4843.

Committee Name: Treatment Assessment Review Committee.

Date: February 15–February 16, 1996.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings 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 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1644 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health on January 29, 1996. The notice was published in the Federal Register, Volume 61, on January 24, 1996.

The Council was to have convened in Open session on January 29, 1996, at 9:00 a.m. to noon and then continue with a Closed session at 1:00 p.m. until adjournment. The Open session will now be held at 9:00 a.m. to 10:30 a.m. During the Open session the Deputy Director, NIH, will present the NIH Director's Report. The Closed session will remain at 1:00 p.m. to adjournment.

Dated: January 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–1643 Filed 1–26–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Proposed Data Collection Available for Public Comment

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Alcohol and Drug Services Survey (ADSS) Phases II and III—New—ADSS Phase II will gather information from a sample of 180 treatment facilities nationwide, including facility-level information on substance abuse treatment services and client record abstracts on a sample of 4,050 treatment clients. Phase III will collect follow up data from the Phase II client sample, including post-treatment data on drug and alcohol use, criminal behavior, employment status, and subsequent treatment services. This ADSS client sample, along with the 1990 DSRS/SROS study cohort of approximately 3,000 clients and an out-of-treatment comparison group of 600 drug users, will be followed over about three years. Automated collection techniques are not cost-effective for this study. ADSS is a three-phase study that will be conducted twice. The total annual burden estimate for Phases II and III of the first cycle of ADSS is 11,703 hours, as shown below:

	No. of respondents	No. of responses/respondent	Av. burden/response	Total burden
Treatment facility staff	180	2	.8	288
Clients	7,050	1	1.5	10,575
Out-of-treatment group	600	2	.7	840

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 22, 1996.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 96–1516 Filed 1–26–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission; Meetings

AGENCY: Department of the Interior.

ACTION: Notice of open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will hold its first meeting to discuss the goals and activities of the Commission. The meetings will be open to the public.

DATES: Meetings will be held on Friday, February 16, 1996 from 9 a.m. to 5 p.m. and Saturday, February 17, 1996 from 8:30 a.m. to noon.

ADDRESSES: The Commission meeting will be held in the Council Chambers in Templeton Center on the Lewis and Clark College Campus, 0615 SW Palatine Hill Road, Portland, Oregon. Parking will be in the Griswold Parking Lot which will be marked by red and white signs. Maps to Council Chambers will be available at Campus Security located at the south end of the Griswold lot.

FOR FURTHER INFORMATION CONTACT: Curt Brown, Program Manager, Western Water Policy Review Office, PO Box 25007, Denver, Colorado 80255, (303) 236–6211.

SUPPLEMENTARY INFORMATION: The Reclamation Projects Authorization and Adjustment Act of 1992, Pub. L. 102–575, Section 30 directs the President to undertake a comprehensive review of Federal activities in the 19 Western States which affect the allocation and use of water resources, and to submit a report on the President's finding and recommendations to Congress. The Secretary of the Interior established the Commission to provide assistance regarding the President's report to Congress. The President's report is due to Congress by October 2, 1997.

The Commission will discuss goals and objectives and a workplan to guide their investigations, as well as perform other duties specific to the Commission. Time will be available for public

comments during the morning session, Saturday, February 17. Members of the public may submit written statements to the Commission at the address listed above, or at the meeting. If you wish to make a 5 minute oral presentation, please call the Commission office at (303) 236–6211 prior to February 9. Members of the public making oral presentations should submit a written copy of their remarks at the meeting. Seating and oral presentations at the meeting will be limited and therefore on a first come basis.

Dated: January 23, 1996.

David Cottingham,

Counselor to the Assistant Secretary for Water and Science, Designated Federal Official.

[FR Doc. 96–1445 Filed 1–26–96; 8:45 am]

BILLING CODE 4310–94–M

Bureau of Land Management

[NV–030–96–1990–02]

Availability for Talapoosa Mining Inc.'s Talapoosa Mine Project Draft Environmental Impact Statement and Notice of Comment Period and Public Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability for the draft environmental impact statement (EIS), for Talapoosa Mining Inc.'s Talapoosa Mine Project, Lyon County, Nevada; and notice of comment period and public meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, 40 CFR 1500–1508, and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Talapoosa Mine Project, and has made copies available for public and agency review.

DATES: Written comments on the Draft EIS must be submitted or postmarked to the BLM no later than April 2, 1996. Oral and/or written comments may also be presented at a public open-house meeting, to be held:

February 13, 1996

4:00–7:00 p.m.

McAtee Building, 2495 Ft. Churchill Rd., Silver Springs, NV.

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Carson City District Office, 1535 Hot Springs Rd., Carson City, Nevada 89706, Attn.: Ron Moore, Talapoosa Mine EIS Project Manager. A limited number of copies of the Draft EIS may be obtained at the same address. In addition, the Draft EIS and supporting documentation are available for review at the following locations: BLM, Carson City District Office, Carson City, Nevada; BLM, Nevada State Office, Reno, Nevada; University of Nevada, Library, Reno, Nevada and the Silver Springs Library, Silver Springs, Nevada.

FOR FURTHER INFORMATION CONTACT: Ron Moore, Talapoosa Mine EIS Project Manager, Bureau of Land Management, 1535 Hot Springs Rd., Carson City, Nevada 89706, (702) 885–6155.

SUPPLEMENTARY INFORMATION: Talapoosa Mining Inc. has submitted a Plan of Operations for the construction, operation, and reclamation of a gold/silver heap leach mining operation at the historic Talapoosa mine site, north of Silver Springs, Nevada. The operation would include a new open pit mine, leaching facilities, haul and access roads, and utility corridors. Operations are expected to last from seven to ten years. The operations would be primarily on public lands administered by the Bureau of Land Management, Carson City District Office, Lahontan Resource Area, with a portion on private lands controlled by Talapoosa Mining Inc. The project area would encompass 2,673 acres, with 2,340 acres of public land administered by the BLM, and 333 acres of private land. Approximately 596 acres of surface disturbance would result from the construction and operation of the proposed mine.

This Draft EIS analyzes the environmental impacts associated with the proposed mine and ancillary facilities, and the no action alternative. In addition, the Draft EIS focuses on the issues of water quality and quantity, social and economic values, noise and visual quality that were identified through public scoping.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the BLM at the address listed above.

Public participation has occurred during the EIS process. A Notice of Intent was filed in the Federal Register in March 1995, and an open scoping period was held for 30 days. Two public scoping meetings to solicit comments and ideas were held in April 1995. All comments presented to the BLM throughout the EIS process have been considered.

To assist the BLM in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the document. Comments may address the adequacy of the Draft EIS and/or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the Draft EIS, comments will be analyzed and considered by the BLM in preparing the Final EIS.

Dated: January 23, 1996.

John O. Singlaub,

District Manager, Carson City District Office.

[FR Doc. 96–1514 Filed 1–26–96; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Atlantic Coastal Fisheries Cooperative Management Act; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act.

DATES: The meeting will be held on February 14, 1996, at 10:00 a.m. to 3:00 p.m. and is open to the public.

ADDRESSES: The meeting will be held at NMFS Headquarters, Silver Spring Metro Center, Building III, Room 3404, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Lubinski, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 840, Arlington, VA 22203, (703) 358–1718.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to Public Law 103–206 and Public Law 102–103. Minutes of the meetings will be maintained by the U.S. Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the National Marine Fisheries Service, F/CM, Metro Center, 1315 East-West Highway, Silver Spring, MD 20910, and will be available for public inspection during regular business

hours, Monday through Friday within 30 days following the meeting.

Dated: January 19, 1996.

Gary Edwards,

Assistant Director—Fisheries; Co-Chair, Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee.

[FR Doc. 96–1126 Filed 1–26–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Earl A. Humphreys, M.D.; Revocation of Registration

On April 12, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Earl A. Humphreys, M.D., (Respondent) of Pittsburgh, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AH1675252, under 21 U.S.C. 824(a)(4), and deny any pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that ''from the early 1980s to mid-1993, [the Respondent] prescribed controlled substances to at least four individuals without a legitimate medical need and with knowledge that these individuals were not the ultimate recipients of the controlled substances.''

On May 1, 1995, the Respondent, through counsel, filed a reply to the show cause order (Reply), waiving his hearing right and providing a factual response to the allegations in the show cause order. Accordingly, the Deputy Administrator now enters his final order in this matter pursuant to 21 C.F.R. 1301.54(e), 1301.57, without a hearing and based on the investigative file and the written Reply submitted by the Respondent.

The Deputy Administrator finds that the Respondent is licensed to practice medicine and surgery in the Commonwealth of Pennsylvania, specializing in gastroenterology and internal medicine. He is registered as a practitioner with the DEA, AH1675252, to handle Schedules II through V controlled substances. In his Reply, the Respondent wrote that he had been in practice for thirty-five years, and ''I have not had a mark against my record.''

The Respondent was the personal physician and friend of Justice Rolf Larsen of the Pennsylvania Supreme Court. Justice Larsen was charged with 27 state felony counts for obtaining controlled substances by fraud, deceit, and subterfuge. At a pre-trial hearing, the Respondent had testified that beginning in 1981 and continuing until 1993, he had issued prescriptions for Schedule IV controlled substances intended for Justice Larsen's use, but he had issued the prescriptions in the name of third-parties. Specifically, during this time he wrote approximately 34 prescriptions for Valium, diazepam, Ativan, and Serax in the names of two of Justice Larsen's secretaries and one law clerk. The Respondent had never met these individuals, and they were not his patients. The three named individuals testified at the pre-trial hearing that in each instance they had picked up the filled prescription at a local pharmacy, had delivered the medication to Justice Larsen, and in no case had they taken the prescribed medications themselves. The Respondent was not paid for issuing these prescriptions.

During this time, Justice Larsen was being treated by either a psychologist or a psychiatrist, but the Respondent was his family physician. The Respondent testified that he examined Justice Larsen about every six months, but not necessarily prior to issuing each of the prescriptions. Rather, Justice Larsen would telephone the Respondent and tell him what substances he wanted and in whose name to issue the prescription. The Respondent would then comply with his patient's request. The Respondent also testified that he was aware of Justice Larsen's diagnosed condition, to include clinical depression and anxiety, and that it was the Respondent's belief that every medication he prescribed for Justice Larsen was for a legitimate medical purpose. The Respondent testified that he had prescribed the substances in legitimate medical dosage amounts and at appropriate time intervals. He stated that he prescribed these controlled substances in this manner in order to preserve his patient's privacy, for ''[t]he public doesn't have to know what medications he's taking. That's my job to provide privacy for him.'' However, the Respondent was not aware of any prescriptions issued to Justice Larsen by his treating psychiatrist or psychologist, and he had not coordinated his prescribing with any of his patient's other care providers.

In the Reply, the Respondent's attorney wrote that ''[t]he facts developed during [Justice Larsen's] trial showed that for a period of many years a local newspaper * * * had carried stories relating not just to Justice Larsen's judicial conduct, but to his family and personal matters * * * So that, it was not simply the normal need for privacy that all psychiatric patients have, but the enlarged need caused by the political nature of these facts. Testimony at trial showed that psychiatric patients suffer a stigma in society, and that public figures bear [an] even greater burden.'' The Respondent also wrote that during the trial, Justice Larsen's psychiatrist and neurologist had testifed that ''they probably would have done the same thing * * * [that] it is common practice, especially in psychiatric patients, to do this. There have been dire consequences where this privacy has been broken.'' However, the trial transcript from Justice Larsen's trial was not a part of the investigative record, and the Respondent did not attach a copy of the referenced sections to his Reply.

On September 14, 1995, the Pennsylvania Bureau of Professional and Occupational Affairs (Bureau) filed formal disciplinary charges and a show cause order against the Respondent. The Bureau's charges focused upon the Respondent's prescribing practices to Justice Larsen between March 1981 and March 1993, noting that he had prescribed controlled substances to four named individuals who were not his patients and had not received treatment from him. Further, the Bureau alleged that the Respondent had failed to conduct physical examinations and re-evaluations concurrent with the issuing of prescriptions to Justice Larsen, and that the records the Respondent maintained pertaining to Justice Larsen were incomplete and inaccurate. The order also asserts that the Respondent's actions were ''unprofessional'' and departed from or failed to conform to ''an ethical or quality standard of the profession.'' The order also states that if found, these violations of Pennsylvania law and regulations would result in civil penalties to include fines and the revocation of his medical license. However, the results of this proposed State action are not reflected in the investigative file or in the Respondent's Reply.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered.

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Pennsylvania Bureau has issued an extensive and comprehensive show cause order alleging that the Respondent has engaged in a twelve year pattern of prescribing controlled substances to individuals who were not his patients. The Bureau asserted that such conduct, if found, would violate state law and regulations, potentially justifying revocation of his medical license and imposition of a fine for each instance of such behavior. However, the result of this show cause order is not contained in the record reviewed at this time by the Deputy Administrator. Therefore, although relevant that the Bureau, after investigating the Respondent's conduct, initiated disciplinary action, the Deputy Administrator has weighed the State's actions accordingly, remaining aware that the Bureau has merely asserted allegations, and that the outcome of the State's actions remains unknown.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the investigative file clearly alleges, and the Respondent has not denied, that he engaged in a course of conduct over a twelve year period which clearly violated federal regulations promulgated pursuant to the Controlled Substances Act. Specifically, to be effective, a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 C.F.R. 1306.04(a); see also Harlan J. Borcherding, D.O, 60 FR 28,796, 28,798 (1995). The Respondent's issuing prescriptions for controlled substances to individuals unknown to him and not under his medical care would not meet this criteria. Further, the Respondent's prescribing of controlled substances to Justice Larsen merely upon his request, without seeing him, examining him, or otherwise making a medical evaluation prior to issuing the prescription, demonstrated behavior such that the patient's demands seemed to replace the physician's judgment. The Deputy Administrator has previously found that prescriptions issued under such circumstances were not a legitimate medical purpose: for example, when an undercover officer dictated the controlled substance to be given, ''rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer.'' *Ibid.* Such uncontroverted actions on the part of the Respondent are preponderating evidence that he has dispensed controlled substances in violation of federal law.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator finds significant that the Respondent, in issuing controlled substance prescriptions for the use of Justice Larsen, failed to coordinate these prescriptions with his patient's other care providers. Although, in the normal course of prescribing, safeguards may exist at pharmacies to prevent over-prescribing of controlled substances to a single patient, in this case, since the prescriptions were not issued in the patient's name, such safeguards would fail to identify this patient as a recipient of multiple, controlled substances prescriptions.

Further, the public was at risk from the potential for diversion of controlled substances by both the patient who could have received, undetected, multiple prescriptions for controlled substances, and the named individuals who were prescribed controlled substances without a legitimate medical need. The very safeguards established to prevent such dangers were circumvented by the Respondent's practice. Although evidence exists to show that diversion, in this case, did not occur, the potential remained over a twelve year period for such abuse, and this potential created a threat to the public interest, as well as to the safety of this individual patient. Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration at this time. The Respondent is certainly free to reapply for a Certificate of Registration and to provide information which would assure the Deputy Administrator that the Respondent's future prescribing practices would not pose a threat to the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AH1675252, issued to Earl A. Humphreys, M.D. be, and it hereby is, revoked, and any pending applications for renewal of said registration are denied. This order is effective February 28, 1996.

Dated: January 23, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–1560 Filed 1–26–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–19]

Terrence E. Murphy, M.D.; Revocation of Registration

On November 30, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Terrence E. Murphy, M.D., (Respondent) of Tulsa, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM2822876, under 21 U.S.C. 824(a), and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), as being consistent with the public interest. Specifically, the Order to Show Cause alleged that:

1. [The Respondent's] continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), as evidenced by, but not limited to, the following:

a. Effective October 26, 1988, the State of Alabama, Alabama State Board of Medical Examiners, Medical Licensure Commission (Alabama Board) suspended [the Respondent's] medical license for one year and, thereafter, placed [his] medical license on indefinite probation.

b. [The Respondent] materially falsified an application for a controlled substance license to the Oklahoma Board of Narcotics and Dangerous Drugs, submitted by [the Respondent] on June 20, 1990, by indicating on such application that [he] never had a previous registration suspended, when, in fact, [his] Alabama medical license had been suspended by the Alabama Board, effective October 26, 1988. [The Respondent] also materially falsified such application by answering that [he] had never been physiologically or psychologically addicted to controlled dangerous substances, when, in

fact, the Jay Hospital, located in Jay[,] Florida, terminated [his] staff privileges at that facility based upon [his] excessive use of drugs, narcotics, alcohol, chemicals or other substances which rendered [him] unable to practice medicine with reasonable skill and safety to patients. Shortly thereafter [he] entered a drug treatment program for impaired physicians in the State of Florida and [he was] diagnosed as being in the early stages of substance abuse.

2. [The Respondent] materially falsified an application for a DEA Certificate of Registration, submitted by [him] on December 27, 1990, by indicating on such application that [he] had never had a State professional license or controlled substance registration suspended, denied, restricted or placed on probation, when, in fact, the Alabama Board suspended [his] medical license and placed [his] license on indefinite probation thereafter, effective October 26, 1988. 21 U.S.C. 824(a)(1).

On December 28, 1993, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Tulsa, Oklahoma, on November 1–2, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On March 2, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Deputy Administrator permit the Respondent to retain his DEA Certificate of Registration in spite of the violation of 21 U.S.C. 824(a)(1), but that he issue a formal reprimand. Both parties filed exceptions to Judge Tenney's decision, and on April 11, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and the filings of the parties, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, except to the extent noted below, the Findings of Fact, Conclusions of Law and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the parties stipulated that the Respondent is a physician who possesses an unrestricted license to practice medicine in the State of Oklahoma. Further, as of the time of the hearing before Judge Tenney, the Oklahoma Board of Medical Licensure (Oklahoma Board) did not have any disciplinary proceedings pending against the Respondent, had not recommended that any action be taken against the Respondent's registrations by the DEA or the Oklahoma Bureau of Narcotics and Dangerous drugs, and neither party has filed any information indicating that such proceedings or recommendations have been subsequently made by the Oklahoma Board.

In the mid-1980's, the Respondent moved to Alabama and obtained an Alabama medical license. However, in July 1987, the Respondent moved to Jay, Florida, where he became licensed and practiced medicine until December 1987, when his staff privileges at the Jay Hospital were revoked. Conflicting evidence was admitted concerning allegations that the Respondent abused substances while practicing medicine at the Jay Hospital. The Respondent testified that, in an attempt to clear up these allegations, he had admitted himself into the Friary on the Shore (Friary), a substance abuse treatment center. He stayed there from January 18–20, 1988, but left despite the recommendation for inpatient treatment. According to Friary medical records, the Respondent had admitted to occasional alcohol use, use of Lorcet for neck pain, use of marijuana while in college, and occasional use of cocaine during his medical residency. The records further indicated that the Respondent's wife believed he took antidepressants and benzodiazepines. A psychologist at the Friary had concluded that the Respondent appeared to have

> many of the compulsive, stressful, addictive personality traits that are often present among individuals who are prone to medicating psychological problems with psychoactive substances. He is likely to be a very unreliable reporter regarding addictive behavior, as are most individuals with the disease of chemical dependency. This complicates his current diagnosis with regard to addictive illness. However, on the basis of his life history and his denial of his responsibility for the situation in which he finds himself, intensive psychotherapy is recommended.

The psychologist gave the diagnostic impression of ''[p]sychoactive substance abuse, including cannabis, cocaine, amphetamines, and possible other substances.'' However, Dr. Perillo, to whom the Respondent was referred by the Friary on January 19, 1988, had concluded that there was ''[p]ossible chemical dependency and abuse, by history,'' and that he could not ''say with any certainty that this person has a definite substance abuse problem.''

On October 11, 1988, the Respondent and the Alabama State Board of Medical Examiners (Alabama Board) entered into a stipulation in which the Respondent agreed, *inter alia,* that he had prescribed controlled substances to various individuals identified in an administrative complaint, but he denied that any of these prescriptions were for anything other than a legitimate medical purpose. However, he neither admitted nor denied the allegations set forth in the administrative complaint as follows:

> 32. Knowingly permitting the dispensation of controlled substances to multiple patients from his medical office while he was absent from the State of Alabama.
>
> 33. Failure to appear before the Board of Medical Examiners for an interview per the Board's request.
>
> 34. In January 1988, summary suspension of medical staff privileges at a Florida hospital based for, *inter alia,* failure to maintain adequate medical standards, for engaging in disruptive behavior, for ''the reasonable belief of physical impairment which may adversely affect patient care'', for using inappropriate clinical judgment, and for patient and staff loss of confidence.
>
> 35. Substance abuse.
>
> 36(b). Intentional avoidance of service of an order for blood and urine samples for a drug screen.
>
> 36(c). From February to May, 1988, writing prescriptions for ''office use'' in violation of federal regulations.
>
> 37. Continuation in practice of the Respondent would constitute an immediate danger to [the Respondent's] patients and to the public.

In the stipulation, the Alabama Board agreed to a disposition of the allegations ''without the necessity of making any further findings of fact or adjudications of fact with respect to these allegations,'' and the Respondent agreed to submit to blood and urine sampling for a drug screen, which tested negative. Although the Alabama administrative complaint contained allegations of substance abuse by the Respondent, he neither denied nor admitted the allegations, and they were never formally adjudicated.

On October 26, 1988, by which time the Respondent had ceased practicing medicine in Alabama, a consent order was entered, in which the Chairman of the Medical Licensure Commission of Alabama found that sanctions were authorized against the Respondent because he had ''committed multiple violations of § 34–24–360(8), *Code of Alabama,* 1975'' (prescribing, dispensing, furnishing or supplying controlled substances to persons for other than a legitimate medical purpose). Further, the order provided that the Respondent's license to practice medicine was suspended for one year,

after which the license would be on indefinite probation, and the Respondent would need express, written permission from the Medical Licensure Commission to re-engage in the practice of medicine in Alabama. As a condition precedent to re-entering medical practice in Alabama, the Respondent also had to voluntarily admit himself to a substance abuse program approved in advance in writing by the State Board of Medical Examiners, and successfully complete all inpatient or residential treatment recommended by the supervising physician. Even if the Respondent became authorized to re-enter medical practice in Alabama, ''the Alabama Controlled Substances Registration Certificate of the Respondent shall be limited to Schedules IV and V.'' Also, the Respondent was ordered to pay a $500.00 fine. In 1989, the Respondent requested the termination of his probation in Alabama, but on March 19, 1990, the Licensure Commission denied his request, finding that there had been ''insufficient objective evidence submitted to reasonably satisfy the Commission that [the Respondent] has complied with the Consent Order.''

Further, after an administration proceeding was held by the Florida Department of Professional Regulation, a final order dated February 12, 1991, was issued by the Florida Board of Medicine, finding that the Respondent had violated a Florida statute by having his license to practice medicine revoked, suspended, or otherwise acted against by the Alabama licensing authority, and ordered the Respondent to pay a $500.00 fine and, if the Respondent sought reactivation of his Florida license, ordering it to be placed on probation with the terms and conditions to be set by the Board.

On October 24, 1988, the Respondent voluntarily submitted to the jurisdiction of the Oklahoma Board, and he agreed to a five-year probation on an Oklahoma Supervised Medical Doctor Certificate with numerous terms and conditions, including *inter alia* that during the probational period: (1) He would not ''prescribe, administer or dispense any medications for his personal use, to specifically include controlled dangerous substances''; (2) he would ''take no medication except that which is authorized by a physician treating him for a legitimate medical need'' and that he would ''inform any physician treating him of allegations made concerning [his] previous use of controlled dangerous substances''; (3) he would ''submit biological fluid specimens * * * for analysis''; (4) he would ''continue under psychiatric care and shall authorize said treating physician to report to the Board quarterly on [his] progress, and [he] shall continue all supportive programs and therapy recommended thereby''; (5) he would ''not prescribe, administer or dispense any Schedule drugs or controlled dangerous substances, until authorized by the Board.'' The Respondent, however, made clear that his agreement was not ''to be construed as an admission * * * of any allegations made against him by licensing authorities in any other State, all material allegations of which are expressly denied.'' On January 13, 1990, the Respondent's application for reinstatement with the Oklahoma Board as a licensed physician and surgeon was granted and he was placed on probation for a period of three years.

However, on May 24, 1990, the Oklahoma Board issued an order restoring an unrestricted medical license to the Respondent. The Board found that the Respondent had fulfilled the terms and conditions of his probation, and that he ''could function as a medical doctor with an unmodified license without endangering public health, safety, or welfare.'' Yet the Order also stated: ''In the event Dr. Murphy returns to active practice in Oklahoma, he will appear before the Oklahoma Board and comply with any terms and conditions imposed at that time, if any, and will submit to the normal post-probation visit by the Board staff,'' including the requirement that the Respondent submit to random blood and urine analysis. From August 3, 1988, until June 1989, the Respondent submitted random blood and urine samples for analysis to Gary K. Borrell, M.D., a physician appointed by the Oklahoma Board, with all test results being negative. Further, the Respondent submitted into evidence an affidavit from Dr. Borrell, attesting that he had never ''observed any of the physical symptoms that [he] would identify as indicative of an abstinence syndrome or of drug withdrawal[, nor any] indications that [he] would interpret as acute toxicity from a substance of abuse.'' Dr. Borrell also opined that the Respondent was not ''physiologically addicted'' to any substance.

On June 11, 1990, the Respondent executed an application for registration with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (Oklahoma Bureau) for authorization to handle controlled substances. Questions seven and eight of that application state:

> 7. Has a previous registration held by the applicant under any name or corporate or legal entity, been surrendered, revoked, suspended, denied or is such action pending?
>
> 8. Have you ever been physiologically or psychologically addicted to controlled dangerous substances?

The Respondent had answered ''No'' to both questions. At the hearing before Judge Tenney, the Respondent explained that he had provided the negative response because he read the question as distinguishing between ''license'' and ''registration'', and since his Oklahoma Bureau registration had not been suspended, he thought the correct answer was ''No.'' The Respondent denied any drug use without a prescription since his ''college'' days.

On August 10, 1990, the Oklahoma Bureau issued an order to show cause to the Respondent, referencing his answers to questions seven and eight, and on September 12, 1990, the Oklahoma Bureau and the Respondent entered into a stipulation. The Stipulation listed as findings of fact the Oklahoma Board's actions against the Respondent's medical license, and concluded as a matter of law that ''by virtue of the action of the Oklahoma State Board of Medical Licensure and Supervision, [the Respondent] has had a restriction or limitation placed upon his professional license'', and that ''upon such a finding, the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall deny a request for registration. * * *'' The stipulation then recommended that the Respondent's request for registration be denied until September 15, 1990, ''after which time he may be registered.'' The Oklahoma Bureau then issued an order reflecting the terms of the stipulation.

On October 3, 1984, DEA Certificate of Registration AM2822876 was assigned to the Respondent. The Respondent executed a renewal application for this registration on December 27, 1990, in which he answered ''No'' to the following question:

> 2b. Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?

On January 11, 1991, the DEA renewed the Respondent's Certificate of Registration AM2822876, for a period of three years.

At the hearing before Judge Tenney, the Respondent's mother testified that when the Respondent had received the renewal application, the deadline was imminent, so he signed the blank form and she then filled in the application

and mailed it. Further, she stated she knew that her son had had problems with his medical license but not with ''his drug licensing,'' which was the subject of the application. She also testified that she never intended to deceive the DEA by responding ''No'' to the question on the form now in dispute.

The Respondent testified before Judge Tenney, explaining that his mother's recollection of events was consistent with his memory of how the December 1990 DEA renewal application had been completed. He stated he still found question 2(b) to be confusing, but that he had not intended to deceive the DEA about his licensing problems in Alabama and Florida. The Respondent further testified that he had signed the form before his mother had prepared it, and that he had not discussed the application with his mother. ''I don't discuss these things hardly at all. I go to work. I work seven days a week as a doctor. I work 100 hours a week. I don't sit around worrying about these applications.'' However, when examined concerning the specific question, the Respondent testified that he did not remember telling the DEA Investigator that he had thought question 2(b) only applied to a conviction. He stated, ''Now, I don't have a transcript of what I said to [the DEA Investigator], and I don't remember if I said that or not, I can just remember that—you know, that was 1990; it is 1994 now * * *. I can just remember the general gist of it. I didn't think I filled it out wrong, and I didn't intend to fill it out wrong.'' When asked: ''Well, if [the DEA Investigator], then, indicates that you told her that it only applies to a conviction, would you challenge her assertion? The Respondent stated: ''I would challenge anybody's memory four years later. Yes, I would.''

However, the DEA Investigator testified that when she questioned the Respondent concerning question 2(b), he had first argued with her concerning the actual content of the question. After the Investigator had another investigator read the question from the application to him, then the Respondent stated that ''it hadn't been his intent to defraud or to lie, falsify his application * * * he basically said he thought the question had said convictions.''

Regarding the Respondent's application before the Oklahoma Bureau and the resulting show cause order, the Investigator testified that the Respondent had informed her that he had never had any problems with the Oklahoma Bureau. However, when questioned further, the Respondent had told the Investigator that his attorney had taken care of any problems relating to that application.

Between July 26 and August 3, 1992, the Respondent began working at the Physicians Injury Clinic (Clinic), located at 3015 East Skelly Drive, Tulsa, Oklahoma. Prior to that date, the Respondent had worked at a medical facility located at 1412 North Robinson Road, Oklahoma City, Oklahoma. On August 6, 1992, personnel from the Clinic's corporate headquarters, located in Oklahoma City, placed an order for controlled substances with a pharmaceutical distributor using the Respondent's DEA number. The order was to be delivered to the Skelly Drive clinic, where the Respondent was then the only physician. However, the address listed on the Respondent's DEA Certificate of Registration was the Robinson Road address.

At the request of the distributor, personnel at the Clinic's headquarters sent a facsimile of the Respondent's DEA registration and a copy of a letter dated July 22, 1992, from the Clinic to the DEA, requesting that the Respondent's registration be changed to the Skelly Drive location. On August 11, 1992, a representative of the distributor telephoned a DEA Diversion Investigator to verify whether the change of address had been approved, and that Investigator informed the representative that the Respondent was still registered at Robinson Road and that the shipment could not be sent to the unregistered location. Subsequently, on August 25, 1992, DEA investigators took a notice of inspection to the Clinic, and the Clinic's office manager consented to an inspection, which was supervised by the Diversion Investigator. The office manager, in response to questions asked by the DEA investigators, took the investigators to ''a locked cabinet in a locked room,'' which contained various Schedules III and IV controlled substances. At the time of the search, the office manager explained to the Investigator that the substances ''belonged to the clinic,'' and no evidence was produced to indicate when the substances had been placed in the cabinet. The Clinic is not registered by the DEA or the Oklahoma Bureau to handle controlled substances. An inventory was conducted, and the controlled substances were sealed until the Respondent's registration change of address was approved by the DEA on October 9, 1992. After such approval, DEA representatives returned to the clinic, unsealed the controlled substances, found no signs of tampering and, after conducting another inventory, found that all of the substances were still there.

At the hearing before Judge Tenney, the Diversion Investigator testified that in approximately ten to twenty percent of the cases where a distributor calls to verify a potential purchaser's address, the DEA registration contains an outdated address. He then stated that he had never recommended revocation of a DEA Certificate of Registration on that basis alone. Another Investigator testified that personnel at the Clinic had placed the order, and that she had not discovered any evidence to indicate that the Respondent had personally placed such an order.

On January 12, 1994, the Respondent executed a subsequent DEA renewal application to keep his registration active during the course of these proceedings. In filling out the application, the Respondent testified that he had sought the advice of counsel to ensure that all responses were correct. In response to question 2(b), which was answered incorrectly on the previous renewal application, the Respondent now correctly answered ''Yes.'' In a comment block, the Respondent wrote, *inter alia:* ''In summary, I hold a license to practice in Oklahoma. I have appeared before the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, who thoroughly investigated all of the previous allegations of Florida and Alabama and dismissed the Show Cause Order prior to the hearing. I have been found eligible for licensing in Oklahoma for the past six years.'' On this application, the Respondent did indicate his new address in Hartshorne, Oklahoma, although the Respondent had been living in Hartshorne since November 1993.

Initially, 21 U.S.C. 824(a)(1) states:

> (a) A registration pursuant to section 823 of this title to * * * distribute, or dispense a controlled substance may be suspended or revoked * * * upon a finding that the registrant—
>
> (1) has materially falsified any application filed pursuant to or required by this subchapter * * *

Thus, as Judge Tenney noted, the Deputy Administrator may revoke or suspend the Respondent's registration upon a showing that he ''materially falsified'' any application filed pursuant to the applicable Controlled Substances Act provisions. Here, the Deputy Administrator concurs with Judge Tenney's finding that the Government did establish a *prima facie* case under 21 U.S.C. 824(a)(1). Specifically, the appropriate test in determining whether the Respondent materially falsified any application is whether the Respondent ''knew or should have known'' that he submitted a false application. See Bobby

Watts, M.D., 58 Fed. Reg. 46,995 (1993); accord Herbert J. Robinson, M.D., 59 Fed Reg. 6,304 (1994).

Here, written on the Respondent's 1990 DEA renewal application was a false answer to question 2(b), for the answer failed to acknowledge the adverse actions taken in Alabama and Florida against his professional license. In determining that such a false answer was also materially false, Judge Tenney wrote in his opinion at 29–30:

> The incorrect response to question 2(b) is clearly ''material.'' As noted by counsel for the Respondent in his closing argument, if the Respondent correctly had checked ''YES'' to the question, that would have been a red flag to [the] DEA to go check with the [State] licensing authorities. . . . *Cf.* . . . *Gonzales* v. *United States*, 286 F.2d 118, 120 (10th Cir. 1960) (addressing a statute concerning ''material false statements. . . ., i.e., statements that could affect or influence the exercise of a government function''), *cert. denied*, 365 U.S. 878, 81 S. Ct. 1028, 6 L.Ed. 2d 190 (1961).

The Respondent attempted to mitigate this falsification by presenting evidence that his mother had completed the application after he had signed it, and she had mailed it without his reviewing the completed form. However, the Deputy Administrator agrees with Judge Tenney's conclusion: ''This lack of attention, or inattention, was the predominant reason for the wrong statement, and the Respondent 'should have known' of the inaccuracy.'' Further, in an analogous case in which a practitioner blamed an application falsification upon a dental nurse who had assisted him in filling out the application, the Administrator of the DEA had held the practitioner responsible, finding it noteworthy that the practitioner signed his name to the application. *Robert L. Vogler, D.D.S.*, 58 Fed. Reg. 51,385 (1993).

Next, the Respondent argued that the DEA had failed to comply fully with the licensing requirements of the Administrative Procedure Act (APA) before initiating this administrative proceeding, and thus the DEA would be precluded from acting upon his registration. Specifically, the Respondent argued that 5 U.S.C. § 558(c) requires DEA to provide him with prior written notice and an opportunity to correct his application errors, and that the DEA had failed to meet these requirements.

Section 558(c) provides in relevant part:

> Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the . . . suspension, [or] revocation . . . of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—
>
> (1) Notice by the agency in writing of the facts or conduct which may warrant the action; and
>
> (2) Opportunity to demonstrate or achieve compliance with all lawful requirements.

However, on this issue, the Deputy Administrator concurs with Judge Tenney's analysis and conclusion:

> To the extent that 5 U.S.C. § 558 applies to the instant proceeding, the Respondent overlooks the ''willfulness'' exception to section 558's requirement of written notice and an opportunity to achieve compliance. In cases of ''willfulness,'' the registrant is not given ''another chance'' to achieve compliance. . . . It is concluded that the material falsification in the instant case, which resulted because the Respondent grossly neglected his obligation to be truthful, is tantamount to ''willfulness'' under 5 U.S.C. § 558(c). The DEA, therefore, was not required to give the Respondent written notice and an opportunity to correct the renewal application before initiating this proceeding.

Further, the Respondent argued in his response to the Government's exceptions, that '' 'Willfulness' means a voluntary, intentional violation of a known legal duty,'' requiring actual knowledge, and not the lesser standard of ''should have known.'' However, cases interpreting the meaning of ''willful'' as used in the APA have noted that the term is often used ''to characterize conduct marked by careless disregard'' of statutory requirements. *Eastman Produce Co.* v. *Benson*, 278 F.2d 606, 609 (3d Cir. 1960); *see, e.g., Biological Resources, Inc.*, 55 Fed. Reg. 30,752 (Health and Human Services 1990) (noting that a ''number of cases that have considered the meaning of willfulness in license revocation proceedings have noted that willful conduct can be found either when a person intentionally does a prohibited act or when a person acts with careless disregard of statutory requirements''). The Deputy Administrator finds that the Respondent's conduct was ''willful,'' for he acted with ''careless disregard'' for the statutory and regulatory requirements when he submitted his 1990 DEA renewal application with the incorrect response to question 2(b). Thus, the Deputy Administrator agrees with Judge Tenney, that DEA's subsequent actions did not violate 5 U.S.C. 558.

Next, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration, or deny a pending application for registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered.

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 Fed. Reg. 16,422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's certificate should be revoked and any pending application denied as being inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Government argued that actions taken against the Respondent's medical licenses in Alabama, Florida, and Oklahoma, as well as the suspension of his Oklahoma Bureau registration, support a finding that State licensing board's recommendations lead to a conclusion adverse to the Respondent's retention of his DEA registration. Judge Tenney disagreed with this proposition, finding instead that the Alabama and Florida adverse actions were five years old, and the factual bases for such action were ''sketchy at best.'' Further, Judge Tenney found more persuasive the fact that Oklahoma authorities had granted the Respondent an unrestricted medical license and an unrestricted controlled substances registration, and that since 1990, there have been no negative allegations nor pending disciplinary proceedings against the Respondent. Thus, Judge Tenney concluded that ''the whole evidence supports a favorable 'recommendation [by] the appropriate State licensing board or professional disciplinary authority.' ''

Here, although the Deputy Administrator agrees with Judge Tenney's factual findings, he disagrees with his conclusion. For the Deputy Administrator also finds significant that in the 1988 Alabama Consent Order, the Respondent's license was placed on indefinite probation, and that as a

condition precedent for his receiving a medical license, the Respondent had to voluntarily admit himself to a substance abuse program and successfully complete it. Further, even if the Respondent became authorized to re-enter medical practice in Alabama, his controlled substances registration would remain limited to Schedules IV and V. Also, in 1990, the Alabama Licensure Commission denied the Respondent's request for termination of his probation, noting ''insufficient objective evidence submitted to reasonably satisfy the Commission that [the Respondent] has complied with the Consent Order.'' Similarly, in 1991, the Florida Board ordered that, if the Respondent sought reactivation of his Florida license, such reinstatement would result in his receiving a probationary license with the terms and conditions to be set by the Board. Therefore, two States recommend, after investigating allegations of misconduct, that probationary requirements be levied against the Respondent's medical license, with stated conditions to be met in Alabama before even a probationary license would be issued.

As to factor two, the Respondent's ''experience in dispening * * * controlled substances,'' the Deputy Administrator agrees with Judge Tenney's findings and conclusions. The Government noted that the Alabama Medical Board had found that the Respondent had allowed his staff to administer and prescribe controlled substances in his absence, and that the Respondent had abused drugs. The Government then argued that such conduct was adverse to the public interest.

However, Judge Tenney concluded that a preponderance of the evidence failed to support this contention. Specifically, the evidence of improper dispensing of controlled substances merely consisted of a finding in the Alabama administrative complaint, which led to a consent order in which the Respondent ''neither admitted nor denied'' the factual allegations. No further adjudication of the facts was conducted. Based on this limited evidence of record, Judge Tenney concluded that ''I too am unable to find with any substantiality that the Respondent allowed his staff to administer and prescribe controlled substances in his absence.'' Furthermore, no other evidence of record supports a finding that the Respondent was unlawfully dispensing controlled substances.

As to the allegation of the Respondent's drug abuse, Judge Tenney found that ''[i]n sum, there was some evidence of occasional past drug abuse, but no persuasive evidence indicative of drug use or abuse during the last decade that would threaten the current public interest under 21 U.S.C. 823(f)(2).'' Although the Deputy Administrator does not condone the Respondent's past conduct of admitted unlawful drug use, he agrees with Judge Tenney's conclusion. For the Respondent's drug screenings from August 1988 to May 1990 were negative, and no contrary evidence was submitted to show drug abuse from 1990 to 1994.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' Judge Tenney found that the Respondent had violated a Federal regulation related to controlled substances, 21 C.F.R. § 1301.61. Specifically, the Respondent ''should have determined whether the July 22, 1992, request by the [Clinic] to modify his registration address had been approved by the DEA before operating at Skelly Drive.'' The Deputy Administrator agrees with this finding. However, Judge Tenney found several mitigating facts, such as the fact that the July 22 letter was generated prior to the Respondent's first day of work at the Clinic, that there was no evidence of diversion of controlled substances from the unregistered office at Skelly Drive, and that the DEA Investigator had never recommended revocation of a DEA registration on the basis of a failure to timely update an address.

Although the Deputy Administrator acknowledges these mitigating facts, he also finds relevant the fact that the Alabama Consent Order found sanctions authorized because, *inter alia,* the Respondent had committed multiple violations of the *Code of Alabama* Section 34–24–360(8) pertaining to the prescribing, dispensing, furnishing or supplying of controlled substances to persons for other than a legitimate medical purpose. Although the facts presented in the record are inadequate to determine the specific conduct underlying such a conclusion, it is still significant under factor four that a State licensing board found that the Respondent's conduct resulted in multiple violations of the State's controlled substances statute.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Government argued that the Respondent's lack of candor raised doubts as to his suitability for DEA registration. However, the Deputy Administrator agrees with Judge Tenney's finding concerning the Respondent's change of address request to DEA. The Government failed to present preponderating evidence that the Respondent was less than candid when he denied placing the controlled substances order for the Clinic prior to receiving the change of address approval from the DEA. Judge Tenney found that the Respondent's testimony on this point was credible and was corroborated by the testimony of the Clinic's office manager.

Further, Judge Tenney found as mitigating evidence, the Respondent's subsequent DEA renewal application with the correct answer to question 2(b). However, it is also significant that in the comment section of this 1994 application, the Respondent wrote that he had been ''eligible for licensing in Oklahoma for the past six years.'' Yet the Respondent failed to disclose that from 1988 to 1990 he had an Oklahoma Supervised Medical Doctor Certificate with numerous terms and conditions, to include that he would ''not prescribe, administer or dispense any Schedule drugs or controlled dangerous substances, until authorized by the Board.'' Again, the Respondent has failed to be candid in his renewal application by stating he was ''eligible for'' his license, when in fact he knew that for two of the six years he referenced, his eligibility had relevant restrictions. Although his response may not reach the level of ''material falsification'', it certainly failed to disclose significant, relevant information. As noted by the Administrator in Bobby Watts, supra: ''Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated.'' Here, the Respondent's lack of candor makes questionable his commitment to DEA regulatory requirements fostered to protect the public from the diversion of controlled substances.

Further, the Respondent has failed to take responsibility for his past conduct. The Deputy Administrator finds significant that the Alabama Board required the Respondent to successfully complete a substance abuse treatment program before reinstating his medical license, even on a probationary basis. Further, when the respondent self-admitted himself into the Friary for evaluation, a psychologist had concluded that intensive psychotherapy was recommended based, not only upon the Respondent's addictive personality traits, but also upon the facts that (1) he was a ''very unreliable reporter regarding addictive behavior, as are most individuals with the disease of chemical dependency,'' and (2) ''his denial of his responsibility for the

situation in which he finds himself.''. However, the record discloses that the Respondent did not follow this advice and enter the Friary or any other treatment program, and the record contains no evidence that he has since sought such treatment.

Also significant was the Respondent's failure to acknowledge his responsibility to review his DEA renewal application before submission, instead he testified in 1994 that ''I don't sit around worrying about these applications.'' The Deputy Administrator agrees with the Government attorney that such conduct raises grave doubts as to the Respondent's commitment to precise regulatory compliance in the future, a commitment needed to meet the responsibilities of a DEA registration for the handling of controlled substances.

Therefore, after reviewing the entire record, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificate of Registration and denying any pending application. The Respondent's violations of statutory and regulatory provisions, his admitted past drug abuse and the lack of evidence that the Respondent completed a substance abuse treatment program as recommended by the Alabama Board and treating physicians at the Friary, and his continuing failure to take responsibility for compliance with DEA regulatory requirements, support a finding that the public interest is best served by revoking his registration and denying any pending applications at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AM2822876 issued to Terrence E. Murphy, M.D., be, and it hereby is, revoked, and any pending applications for renewal of said registration are denied. This order is effective February 28, 1996.

Dated: January 23, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–1559 Filed 1–26–96; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: February 12–13, 1996; 8:30 a.m. until 5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Kichoon Yang, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1881.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Analysis Program nominations/applications as part of the selection process for awards.

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 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 23, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–1450 Filed 1–26–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Availability of the Revision 1 to the License Application Review Plan for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste—Draft Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Revision 1 to NUREG–1323, ''The License Application Review Plan for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste—Draft Review Plan.''

ADDRESSES: Copies of NUREG–1323, Revision 1 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161–0002. A copy of NUREG–1323, Revision 1 is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), N.W., Washington, D.C. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Sandra L. Wastler, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852. Telephone: (301) 415–6724.

SUPPLEMENTARY INFORMATION: The License Application Review Plan (LARP) provides guidance to the NRC staff who will review the U.S. Department of Energy's (DOE's) license application to construct a mined geologic repository for the disposal of spent nuclear fuel and other high-level radioactive waste at Yucca Mountain, Nevada. The LARP is intended to ensure the quality and uniformity of the staff reviews and establishes the appropriate review priorities, and presents a well-defined base from which to evaluate proposed changes in the scope and requirements of the staff reviews. Because it is a public document, it will also make available to DOE and other interested parties information on the staff's review process so that they may better understand the review strategies, procedures, and acceptance criteria that the staff will use.

The LARP, Revision 0 was issued in September, 1994. Revision 0 represented the staff's initial efforts in developing the LARP and was comprised of both completed and outlined individual review plans. The LARP was and continues to be, however, a work in progress. This draft version, designated Revision 1, represents the staff's latest efforts in the development of the LARP and includes 12 newly completed review plans. Appendix D provides a status of the development of the individual review plans.

Dated at Rockville, Maryland, this 17th day of January 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguard.

[FR Doc. 96–1523 Filed 1–26–96; 8:45 am]

BILLING CODE 7590–01–P

Atomic Safety and Licensing Board

[Docket No. IA 95–055, EA 95–101, ASLBP No. 96–712–01–EA]

In the Matter of James L. Shelton; (Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)); Notice of Hearing

January 23, 1996.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Frank F. Hooper, Dr. Charles N. Kelber

Notice is hereby given that, by Memorandum and Order dated January 23, 1996, the Atomic Safety and Licensing Board for this proceeding has granted the request of James L. Shelton for a hearing in the above-entitled proceeding. The hearing concerns the Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) issued by the NRC Staff on October 31, 1995 (60 FR 56176, November 7, 1995). The parties to the proceeding are Mr. Shelton and the NRC Staff. The issue to be considered at the hearing is whether the Order should be sustained.

For further information concerning this proceeding, see the Order Prohibiting Involvement in NRC-Licensed Activities, cited above. Other materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L St. N.W., Washington, D.C. 20555, and at the Commission's Region II office, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323–0199.

During the course of this proceeding, the Licensing Board will conduct one or more prehearing conferences and, as necessary, evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board Orders. Except to the extent that these sessions are held through telephone conference calls, members of the public will be invited to attend these sessions.

Persons who are not parties to the proceeding are invited to submit limited appearance statements with regard to the Order Prohibiting Involvement in NRC-Licensed Activities, as permitted by 10 C.F.R. 2.715(a). During certain prehearing conference and/or evidentiary hearing sessions, such persons will be afforded the opportunity to make oral limited appearance statements. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations as to the proper boundaries of the issue to be considered. Written statements, or requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. A copy of such statement or request should also be served on the Chairman of this Licensing Board, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

Dated at Rockville, Maryland, on January 23, 1996.

[FR Doc. 96–1522 Filed 1–26–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, February 22, 1996, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: January 19, 1996.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 96–1462 Filed 1–26–96; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on—Thursday, March 7, 1996.

The meeting will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). The caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Chairman compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: January 19, 1996.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 96–1461 Filed 1–26–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36755; File No. SR–Amex–95–46]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Exchange's Arbitration Rules

January 22, 1996.

On November 28, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its arbitration rules concerning class action claims, the initiation of a claim, document exchanges, filing fees, and the enforceability of arbitration awards.

The proposed rule change was published for comment in the Federal Register on December 14, 1995.[3] No comments were received on the proposal. This order approves the proposal.

As described more fully below, the Exchange has proposed amendments to its arbitration procedures that were developed primarily by the Securities Industry Conference on Arbitration.[4]

The Commission has carefully reviewed the Exchange's proposal to amend Amex Rules 600 (Arbitration), 606 (Initiation of Proceedings), 607 (General Provision Governing Prehearing Proceeding), 620 (Schedule of Fees), and add a new rule, 624 (Failure to Honor Award). The Commission concludes that this proposal 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).[5]

Amex Rule 600(d)(iii) currently bars members, allied members, member organizations, and associated persons from seeking to enforce an agreement to arbitrate against a customer where that customer has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action. Amex Rule 600, however, currently omits specific reference to claims filed by members, allied members, member organizations, and associated persons against other members, allied members, member organizations, and associated persons. The proposed amendment clarifies that all class actions, including claims involving members, allied members, member organizations, and associated persons, are ineligible for submission to the Exchange's arbitration facility.

The Commission finds that the proposed amendment to Amex Rule 600(d)(iii) is consistent with Section 6(b)(5)[6] because it is designed to promote just and equitable principles of trade, prevent unfair discrimination between customers, issuers, brokers, or dealers, and, in general, protect investors and the public interest. Over the years, the courts have developed procedures and expertise for managing class action litigation, and, therefore, duplicating the often complex procedural safeguards necessary for these lawsuits is unnecessary. In addition, access to the courts for class action litigation should be preserved for claims filed by members, allied members, member organizations, and associated persons against other members, allied members, member organizations, and associated persons as well as for claims involving investors. Hence, this rule change should provide a sound procedure for the management of class action disputes, should promote the efficient resolution of these types of class action disputes, and should prevent wasteful litigation over the possible applicability of agreements to arbitrate between members, allied members, member organizations, and associated persons, notwithstanding the exclusion of class action claims from Amex arbitration.

Currently, Amex Rule 606(c)(6) provides that decisions concerning the right to arbitrate are made by the Director of Arbitration, subject to appeal to the Exchange's Board of Governors. In order to conform the Exchange's rules to the Uniform Code of Arbitration, the Exchange proposes to delete Amex Rule 606(c)(6). The Exchange believes decisions concerning the right to arbitrate a claim should be made by the panel of arbitrators selected to hear the matter, instead of the Director of Arbitration.

The Commission finds that the proposed deletion of Amex Rule 606(c)(6) is consistent with Section 6(b)(5) because it is designed to prevent unfair discrimination between customers, issuers, brokers, or dealers and, in general, protect investors and the public interest. Impartiality is an important aspect of the arbitration process. By allowing a panel of arbitrators to make the determination of whether or not a claim may be submitted to the Exchange's arbitration facility, the proposed rule change should further improve the arbitration process's appearance of impartiality.

Amex Rule 607(c) currently requires all parties to serve on each other copies of documents in their possession that they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than ten calendar days prior to the first scheduled hearing date. The Exchange proposes to amend this rule to allow parties to: (1) Provide a list of documents that have been produced previously to the other side, instead of providing the actual documents; (2) require the list identifying witnesses to include the address and business affiliation of the witnesses listed; and (3) require prehearing exchanges of documents and the list of documents previously produced to occur twenty days in advance of the hearing, instead of ten days as is presently required.

The Commission finds that the proposed amendments to Amex Rule 607(c) are consistent with Section 6(b)(5) because they are designed to promote just and equitable principles of trade, prevent unfair discrimination between customers, issuers, brokers, or dealers, and, in general, protect investors and the public interest.[7] The proposed amendments should increase the efficiency of the arbitration process because they: (1) Eliminate duplicative prehearing document exchange; (2) should assist parties in the process of preparing and organizing their cases by providing them with advance notice regarding the background of witnesses and the location of nonparty witnesses; (3) should reduce the number of instances of surprise; and (4) should provide the parties with a more reasonable time frame in which to address last minute discovery requests.

Amex Rule 620(e) presently provides that the nonrefundable filing fee for a dispute that does not specify a money claim is $250, while Amex Rule 620(i) charges industry parties a $500 nonrefundable filing fee when the dispute does state a money claim. The proposed amendment to Amex Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36566 (Dec. 8, 1995), 60 FR 64191.

[4] Amex Rule 600(d)(iii) corresponds to Securities Industry Conference on Arbitration Uniform Code of Arbitration (''SICA UCA'') Section 1(d) (iii) (as amended Jan. 20, 1994); Amex Rule 607(c) corresponds to SICA UCA Section 20(c) (as amended Jan. 7, 1993 and Oct. 21, 1994); Amex Rule 620(e) corresponds to SICA UCA Section 30(e) (as amended Oct. 21, 1994).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

620(e) would unify the nonrefundable filing fee for all industry claims at $500.

The Commission finds that this proposed amendment is consistent with Section 6(b)(4)[8] because it provides for the equitable allocation of reasonable fees among its members and other persons using its facilities. Moreover, a uniform filing fee removes any temptation for industry parties to purposely omit the monetary amount of their claims in order to reduce the nonrefundable filing fee from $500 to $250.[9]

The Exchange is proposing to add a new rule, Amex Rule 624. This new rule would provide that the failure of a member firm or registered representative to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, would subject the firm or registered representative to disciplinary proceedings at the Exchange.

The Commission finds that the addition of proposed Amex Rule 624 to the Exchange's arbitration rules is consistent with Section 6(b)(6)[10] because it provides for appropriate disciplinary action for violating the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange. By establishing the enforceability of arbitration awards, this proposal should increase the effectiveness of the arbitration process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Amex–95–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1565 Filed 1–26–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Securities Exchange Act Release No. 35167 (Dec. 28, 1994), 60 FR 1816 (approving File No. SR–NASD–94–75 and publishing the NASD's determination that there have been situations in which industry parties have purposely not disclosed the monetary amount of their claim in order to reduce the nonrefundable filing fee from $500 to $250).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–36751; File No. SR–CHX–96–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to a Program To Display Price Improvement on the Execution Report Sent to the Entering Firm

January 22, 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 January 18, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to implement a program that will calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

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 purpose of the proposed rule change is to implement a program for calculating and displaying, on an execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange is proposing to refer to this calculated dollar savings as the ''NATIONAL BEST[SM].''

The NATIONAL BEST is proposed to be made available for intraday market orders entered via the Exchange's MAX system that are not tick sensitive and are entered from off the Floor.[1] The NATIONAL BEST (amount of price improvement) is calculated in comparison to the best bid and offer displayed in the national market system at the time the order is received.[2] Only orders executed at a price better than the inside market will receive a NATIONAL BEST indicator.

The following examples illustrate how NATIONAL BEST is proposed to work.

Assume the national market quote is 50–50¼.

Example 1—A market order to sell 1000 shares, entered on the CHX, is stopped at 50, meaning it is guaranteed a price at 50 or a better price. The quote is narrowed to 50–50⅛ and the order is subsequently executed at 50⅛. This is an ⅛ point savings over the national bid price of 50, which translates into $125 savings over the guaranteed price. Thus, the execution report would display NATIONAL BEST $125.[3]

Assume the national market quote is 50–50¼.

Example 2—A market order to buy 800 shares, entered on the CHX, is executed at 50⅛. This is an ⅛ point savings over taking the prevailing offer of 50¼. The execution report would display NATIONAL BEST $100.

If there is no price improvement because either there was no execution between the national best bid or offer or the order was not eligible for the program, then no price improvement information would be displayed on the execution report to the entering firm.

The Exchange believes that the NATIONAL BEST can be expected to enhance the information made available to investors and improve their understanding of the auction market.

[SM] NATIONAL BEST is a service mark of the Chicago Stock Exchange, Inc.

[1] Also excluded from the NATIONAL BEST feature are orders received when the spread between the national best bid and offer is one minimum variation, and MAX floor broker orders.

[2] For stocks that are not ITS-eligible, the CHX quote is used.

[3] The algorithm that calculates the savings per share can calculate price improvement from a minimum of 1/32 or $0.03125 per share to a maximum of 96/32 or $3.00 per share. If price improvement exceeds $3.00 per share, the NATIONAL BEST will be preceded by a ''>'' sign and will equal $3.00 × the number of shares traded.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the CHX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change. In fact, the Exchange believes that the NATIONAL BEST program can reasonably be expected to enhance competition by disclosing to investors the amount of savings they may realize as a result of the price improvement their orders may receive when executed on the CHX.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the NATIONAL BEST program has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(e)(5) thereunder.[4] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 CHX. All submissions should refer to File No. SR–CHX–96–03 and should be submitted by February 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1566 Filed 1–26–96: 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 240.19b–4(e)(5).

[Release No. 34–36753; File No. SR–CHX–95–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Order Processing Fees and Transaction Fees

January 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 2, 1996 the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section (c), add a new Section (d), and make conforming renumbering changes to existing Sections (d) through (o) of its Membership Dues and Fees Schedule.

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 purpose of the proposed rule change is to simplify the Exchange's order processing and transaction fee schedule. The new fee schedule contemplates two types of fees. First, the CHX will assess a processing fee for odd lot orders and limit orders that are placed on a specialist's book and are executed subsequently. The odd lot processing fee is similar to the current odd lot transaction fee, except that it will not include applicable trade recording fees.[2] It will be $.35 per trade, up to a maximum of $400.00 per month. The open limit order processing fee will be $.25 per limit order that is executed. Orders in NASDAQ/NMS Securities[3] will not be assessed any order processing fees.

Second, the Exchange will assess certain transaction fees for orders executed on the CHX. Market orders sent via MAX[4] will not be assessed any

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission notes that the CHX has decided to terminate the clearance and settlement services offered by several of its subsidiaries. See Securities Exchange Act Release No. 36684 (Jan. 5, 1995), 61 FR 1195 (approving the necessary proposed rule changes and providing details of the CHX's agreement not to engage in the businesses from which it has decided to withdraw).

[3] The Commission notes that the National Association of Securities Dealers, Inc. refers to such securities as ''Nasdaq National Market Securities.'' However, the Exchange, in order to maintain consistency within its rules, still utilizes the term ''NASDAQ/NMS Securities.'' The Exchange intends to update this aspect of its rules at a later date. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Anthony P. Pecora, Attorney, SEC (Jan. 16, 1996).

[4] MAX stands for ''Midwest Automated Execution System.'' This system may be used to provide automated delivery and execution of certain orders. See Chicago Stock Exchange Guide, Article XX, Rule 37.

transaction fees. All other orders (except orders of specialists, orders in NASDAQ/NMS Securities, and orders of a floor broker acting in the capacity as a principal) will be charged a transaction fee on a sliding scale. There will be no charge for the first 500 shares; a $.0075 per share charge for the next 2000 shares; a $.005 per share charge for the next 7500 shares; and a $.004 per share charge for the remaining shares of an order. This transaction fee will be capped at a maximum of $100.00 per side. This cap is similar to the cap on round lot trades today [5] except that it will not include applicable trade recording fees.[6] The Exchange will impose a maximum cap of $7,000 per month for transaction fees on orders sent via MAX that are executed. Also, for these fees, the Exchange will impose maximum monthly transaction fees of $45,000 for firms with a floor broker or market maker presence on the floor of the Exchange and $65,000 for orders of all-floor members. The Exchange will continue to waive transaction fees for orders in Tape B eligible issues that are executed through MAX.[7] In addition, all transaction fees for orders in NASDAQ/NMS Securities will be waived.

Fees for specialists will remain unchanged.

Floor brokers acting in the capacity as a principal will be charged a transaction fee for each such order on a sliding scale. There will be no charge for the first 500 shares; a $.0015 per share charge for the next 2000 shares; a $.001 per share charge for the next 7500 shares; and a $.0008 per share charge for the remaining shares of an order. The transaction fee will be capped at a maximum of $20.00 per side. However, there will be no monthly cap on these transaction fees.

[5] The language contained in the Exchange's current fee schedule refers to a ''per trade'' cap, but the Exchange's practice has been to interpret this as a ''per side'' cap. Therefore, the practical effect of this filing would be to align the language contained in the CHX's fee schedule with its current interpretation. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Glen Barrentine, Senior Counsel/Team Leader, SEC (Jan. 18, 1996).

[6] See *supra* note 2.

[7] The Consolidated Tape, operated by the Consolidated Tape Association (''CTA''), compiles current last sale reports in certain listed securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Chicago, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in American Stock Exchange listed stocks and qualifying regional listed stocks are reported on CTA Tape B. See Securities Exchange Act Release No. 35239, (Jan. 19, 1995), 60 FR 4935 (extending the waiver transaction fees for Tape B eligible issues that are executed through MAX).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(4) [9] in particular in that it 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 Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any 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 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 [10] and subparagraph (e) of Rule 19b–4 thereunder. [11]

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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–30 and should be submitted by February 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1473 Filed 1–26–96; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4.

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–35750; File No. SR–DTC–95–18]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Seeking to Establish a Coupon Collection Service for Municipal Bearer Bonds

January 22, 1996.

On September 18, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–95–18) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On October 30, 1995, DTC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the Federal Register on December 11, 1995.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change establishes a service for the collection of interest relating to the coupons from municipal bearer bonds. This service includes collection of coupons which are due in the future as well as past-due coupons for DTC eligible and ineligible municipal issues payable in the United States. Past-due coupons will be accepted for up to three years after the payable date.

DTC participants using this service must deposit coupons in a standard

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation (''Division''), Commission (October 26, 1995).

[3] Securities Exchange Act Release No. 36545 (December 1, 1995), 60 FR 63554.

sealed envelope or ''shell'' with no more than 200 coupons contained in any one shell.[4] Mutilated coupons must be guaranteed by the depositing participant and placed into separate shells.[5] DTC requires that each shell contain the following information on its face: (i) CUSIP number; (ii) a description of the issue including municipality, state, purpose, series, date of issue, and maturity date; (iii) payable date; (iv) quantity of coupons enclosed; (v) dollar value of individual coupons; (vi) total shell value; (vii) participant number; and (viii) contact name and telephone number of the depositing participant. All shells must be accompanied by a completed deposit ticket that includes: (i) DTC participant number; (ii) shell quantity; (iii) total dollar value; (iv) CUSIP number per shell; (v) coupon quantity per shall; (vi) dollar value per shell; and (vii) whether the coupons are payable on a future date or are pastdue.[6]

DTC will verify the number of shells listed on the deposit ticket and will give the depositing participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, DTC will immediately reject the entire deposit and will return it to the participant. DTC will neither inspect nor verify shells' contents prior to presentation to paying agents. The depositing participant is responsible for the integrity of the shells' contents. In the event of a coupon shell loss, the participant must provide DTC with a full description (including certificate numbers) of the coupons contained in the shell.

The paying agent may reject and return coupons to DTC for a variety of reasons. The most common reasons for rejection are likely to include: (i) mixed shell contents including mixed payable dates, mixed series or purposes, or mixed maturity years; (ii) incorrect count of shell contents; (iii) called certificate; (iv) mutilated coupon; (v) stopped certificate; [7] or (vi) issue in default.

DTC will pass rejected shells to its participants in the form received from the paying agent together with any paying agent documentation. DTC will not inspect or verify the contents of rejected shells. For shells rejected after the payable date, DTC will debit appropriate funds from the depositing participant's account on the day the rejected coupons are returned to the participant.

DTC will credit interest to its participants on the payable date for coupons that are deposited (i) at least eight business days prior to payable date if the paying agent for the coupons is located outside of New York City or (ii) at least five business days prior to the payable date if the paying agent is located in New York City. Coupons not deposited within the time frames described above and past-due coupons will be credited to participants (i) ten business days following the date of deposit if the paying agent is located outside New York City or (ii) seven business days following the date of deposit if the paying agent is located in New York City.[8]

DTC will credit the accounts of its depositing participants on the foregoing payable dates without regard to whether DTC actually has received payment from the issuer or paying agent as of such date.[9] All coupons deposited after 11 a.m. will be considered to be received the following business day. In addition, during the first quarter of 1996, DTC will make available a new Participant Terminal System (''PTS'') function which will enable DTC participants to view the status of their coupon deposits.

DTC will charge its participants the following fees for this service:

Shells deposited a minimum of 15 days before payable date	$4.50
Shells deposited less than 15 days before payable date (including past-due coupons)	5.25
Rejected shells	15.00

II. Discussion

Section 17A(b)(3)(F) [10] of the Act requires that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act because the new service presents a more efficient method of settling the payment of bearer bond coupons and should allow DTC participants to reduce the labor needed to deal with may different issuers or paying agents in connection with the collection of coupons and the receipt of interest payments. Furthermore, DTC participants should be better able to track the status of the coupon receipt and interest payment process because these activities will be reported directly to them through the new PTS function.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[4] Only coupons for the same CUSIP number, series, and payable date can be enclosed in any one shell.

[5] The depositing participant will guarantee the validity of the coupon number, bond number, payable date, and payable amount of the mutilated coupon by a stamp affixed to the coupon executed by an authorized officer of such participant. In cases of a badly mutilated coupon, DTC may require a letter of indemnity. In the event a paying agent rejects a mutilated coupon, DTC will reverse any credit made to the depositing participant's account with respect to such coupon. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

[6] When payments on the coupons are due in the future, each deposit ticket can have up to 50 shells attached to it, but all of the coupons in each of the attached shells must have the same payable date. For past-due coupons, shells with different payable dates may be listed on the same deposit ticket. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division, Commission (October 26, 1995).

[7] A stopped certificate is a certificate for which a stop transfer instruction has been requested. A stop transfer instruction typically is initiated as the result of a lost or stolen stock certificate. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 26, 1995).

[8] DTC will accept past-due coupons into the coupon selection service program for up to three years after the original coupon payment date.

[9] According to DTC, payments due DTC from issuers and paying agents are received on or before the payable date between 97 and 98 percent of the time. Typically, late payments are the result of transmission problems or equipment failure which is unrelated to the ability of the issuer or paying agent to actually make such payments. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

[10] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36757; File No. SR–NASD–95–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Add Two Position and Exercise Limit Tiers for Qualifying Equity Option Classes

January 22, 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 November 20, 1995, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The NASD has requested accelerated approval for the proposal. This order approves the NASD's proposal on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, Section 33(b)(3)(A) of the NASD Rules of Fair Practice to add two new position limit tiers for option classes overlying equity securities that meet certain criteria for high liquidity. Specifically, the NASD proposes to add a 20,000-contract position limit tier and a 25,000-contract position limit tier.

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication in the Federal Register.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to amend its rules governing position and exercise limits for equity options [3] to conform to similar proposals by the options exchanges which were recently approved by the Commission.[4] NASD rules currently provide that position and exercise limits are determined according to a ''three-tiered'' system. Specifically, depending upon the trading volume and public float of the underlying security, the position limit for an equity option is either 4,500, 7,500, or 10,500 contracts.[5]

In particular, the 10,500-contract position limit applies to: (1) Exchange-listed options traded by ''access'' [6] firms with a corresponding 10,500-contract position limit imposed by the options exchange(s) on which the option is traded; [7] (2) all conventional options overlying equity securities which underlie exchange-traded options that have a 10,500-contract position limit; [8] and (3) all conventional options overlying equity securities that qualify for, but do not underlie, an exchange-traded option with a position limit of 10,500-contracts.

Similarly, the 7,500-contract position limit applies to: (1) Exchange-listed options traded by ''access'' firms with a corresponding 7,500-contract position limit imposed by the options exchange(s) on which the option is traded; [9] (2) all conventional options overlying equity securities which underlie exchange-traded options that have a 7,500-contract position limit; and (3) all conventional options overlying equity securities that qualify for, but do not underlie, an exchange-traded option with a position limit of 7,500-contracts.

Lastly, the 4,500-contract position limit applies to: (1) Exchange-listed options traded by ''access'' firms with a corresponding 4,500-contract position limit imposed by the options exchange(s) on which the option is traded; [10] and (2) all conventional options overlying equity securities which either underlie exchange-traded options that have a 4,500-contract position limit or do not underlie an exchange-traded option.

Through this rule filing, the NASD proposes to add two new higher position limit tiers that correspond to the two new ''upper'' position limit tiers recently approved by the Commission for exchange-traded options.[11] Specifically, the NASD proposes to add a 20,000-contract position limit tier and a 25,000-contract position limit tier. To qualify for the 20,000-contract position limit tier, the underlying security must have at least 240 million shares outstanding with 60 million shares traded in the past six months, or have 80 million shares traded in the past six months. To qualify for the 25,000-contract position limit tier, the underlying security must have at least 300 million shares outstanding with 75 million shares traded in the past six months, or have 100 million shares traded in the past six months. Thus, for NASD members that are ''access'' firms

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts and long puts and short calls) that can be held or written by an investor of group of investors acting in concern. Exercised limits restrict the number of options contracts which an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. *See* Sections 33(b) (3) and (4) of Article III of the NASD Rules of Fair Practice.

[4] See Securities Exchange Act Release Nos. 36371 (October 13, 1995), 60 FR 54269 (October 20, 1995) (order approving File No. SR–CBOE–95–42); and 36409 (October 23, 1995), 60 FR 55399 (October 31, 1995) (Order approving File Nos. SR–NYSE–95–31, SR–PSE–95–25, SR–Amex–95–42, and SR–Phlx–95–71).

[5] In this connection, NASD rules do not specifically govern how a specific equity option falls within one of the three position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purposes of the NASD's rule.

[6] ''Access'' firms are NASD members which conduct a business in exchange-listed options but which are not members of any of the options exchanges upon which the options are listed and traded.

[7] To be eligible for the 10,500-contract position limit under the options exchanges' rules, an underlying security must have either (i) trading volume of at least 40 million shares during the most recent six month trading period; or (ii) trading volume of at least 30 million shares during the most recent six month trading period and at least 120 million shares currently outstanding.

[8] Conventional equity options are defined in Article III, Section 33(b)(2)(GG) of the NASD Rules of Fair Practice to mean ''any option contract not issued, or subject to issuance, by The Options Clearing Corporation.''

[9] To be eligible for the 7,500-contract position limit under the options exchanges' rules, an underlying security must have either (i) trading volume of at least 20 million shares during the most recent six month trading period; or (ii) trading volume of at least 15 million shares during the most recent six month trading period and at least 40 million shares currently outstanding.

[10] Under the rules of the options exchanges, all securities that do not qualify for a position limit of 10,500-contracts or 7,500-contracts are subject to the 4,500-contract tier.

[11] See *supra* note 4.

or that are involved in conventional equity option transactions, the proposal will conform the NASD's position and exercise limit rules to the position limit tiers recently approved by the Commission for the options exchanges.

The NASD believes that the proposed ''upper'' position limits are warranted for the following reasons. First, the higher position and exercise limits will afford market participants, particularly investors with sizable holdings, accounts, or assets, greater flexibility to employ larger options positions when effecting their hedging and investment strategies. Second, the higher position limit tiers likely will facilitate greater activity in exchange-listed options and conventional equity options, thereby enhancing liquidity in the markets for exchange-traded options, conventional equity options, and the securities underlying those options. Third, by conforming the NASD's position and exercise limits to the limits imposed by the options exchanges, there will be no confusion by market participants concerning applicable position and exercise limits. Fourth, with respect to equity securities underlying exchange-traded options, market participants will be able to establish conventional options positions on these securities equivalent in size of standardized options positions on these securities.

Moreover, the NASD believes that the proposed larger position limit tiers will not compromise the integrity of the options markets or jeopardize the stability of the securities markets underlying exchange-traded equity options or conventional equity options. Specifically, because the eligibility standards for the higher position limit tiers will ensure that only those securities with a sufficiently large capitalization and public float will be eligible for the higher limits, the NASD does not believe that the higher position limit tiers will have an adverse market impact. In addition, as noted in the Chicago Board Options Exchange, Inc.'s (''CBOE'') rule filing concerning the higher position limit tiers, the largest dollar value that could be controlled in any equity options class by any one investor or group of investors acting in concert under the proposal would not exceed .7 percent of the market capitalization of any security eligible for one of the higher position limit tiers.[12] Accordingly, the NASD believes that the proposed position limit tiers would involve a very modest increase in position limits. Furthermore, the NASD notes that it will continue to apply its options surveillance procedures and that it and the options exchanges will continue to be members of the Intermarket Surveillance Group (''ISG'').

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[13] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the NASD believes that the proposal will promote the maintenance of fair and orderly markets because it will, among other things, serve to avoid investor confusion concerning applicable equity option position and exercise limits as well as to facilitate the use of equity options by investors, without compromising the integrity of the equity options markets or the markets for the securities underlying equity options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD 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

Comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–55 and should be submitted by February 20, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 association, and, in particular, with the requirements of Section 15A(b)(6). Specifically, the Commission believes that the proposed addition of position and exercise limit tiers of 25,000-contracts and 20,000-contracts for qualifying equity options will accommodate the needs of investors and market participants. The Commission also believes that the proposed rule change will increase the potential depth and liquidity of the equity options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities. Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 15A(b)(6), that association rules facilitate transactions in securities while continuing to further investor protection and the public interest.

In approving the increased limits, the Commission recognizes that securities with active and deep trading markets, as well as with broad public ownership, are more difficult to manipulate or disrupt than securities having less active and deep markets and having smaller public floats. The proposed additional position and exercise limit tiers recognize this by seeking to minimize the restraints on those options classes that can accommodate larger limits without significantly increasing manipulation concerns.[14] In particular,

[12] See *supra* note 4.

[13] 15 U.S.C. § 78f(b)(5) (1988).

[14] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for the two new tiers, the Commission has concluded that the proposed exercise limit additions do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

the proposed limit of 25,000-contracts and 20,000-contracts for options on the most actively traded, widely held securities, permits the Commission to avoid placing unnecessary restraints on those options where the manipulative potential is the least and the need for increased positions likely is the greatest. Accordingly, the Commission believes that the additional position and exercise limit tiers is warranted.

The Commission believes that the proposed additions to the NASD's position and exercise limit tiers appears to be both appropriate and consistent with the Commission's gradual, evolutionary approach. There are no ideal position limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. The Commission, however, is relying on the absence of discernible manipulation problems under the current framework as an indicator that the proposed additional limit tiers are justified.

The Commission does not believe that the addition of the two new higher limit tiers will have any adverse effects on the options markets. In approving the initial two-tiered position limit system, the Commission stated that it did not believe that requiring traders to keep track of two limits rather than one was burdensome or confusing or would lead to accidental violations.[15] The Commission does not believe that a change from the current three tiers to five tiers should change this conclusion.

The Commission believes that although position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulations, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. The Commission believes that the NASD's proposal is a reasonable and appropriately tailored effort to accommodate the identified needs of options market participants. In this regard it is important to note that the proposals only add higher position and exercise limit tiers for classes of options involving the most liquid stocks. As a result, the proposal affects only a small number of equity option classes that are traded. In addition, based on the NASD's experience, the Commission believes that the proposed additional limit tiers should result in little or no additional risk to the marketplace.[16]

The Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, by accelerating the approval of the NASD's rule proposal, the Commission is conforming the NASD's position and exercise limits with those levels recently approved for the options exchanges.[17] Accelerated approval of the proposed rule change will thereby provide for the desired uniformity for position and exercise limits within the exchange traded options market. Any other course of action could lead to unnecessary investor confusion. In addition, the CBOE's proposal was noticed for the entire twenty-one day comment period and generated no negative responses.[18] Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[19] of the Act that the proposed rule change (File No. SR–NASD–95–55) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[15] In this regard, the Commission notes that the options exchanges and the NASD routinely review the trading characteristics of the underlying stocks to determine the appropriate position and exercise limit tiers for the option classes.

[16] The Commission notes that to the extent the potential for manipulation increases because of the additional tiers, the Commission believes the NASD's surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. The Commission will, of course, continue to monitor the NASD's surveillance programs to ensure that problems do not arise.

[17] See *supra* note 4.

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36756; File No. SR–NYSE–95–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A''

January 22, 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 28, 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 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 proposed rule change consists of revisions to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' (the Rule 476A Violations List) by adding to the List: (1) misstatements or omission of fact on any submission filed with the Exchange as provided in NYSE Rule 476(a)(10); (2) failure to comply with the requirements of NYSE Rule 95 with respect to its order identification requirements or prohibition of transactions by members on the Floor involving discretion; and (3) failure to comply with certain requirements for execution of block cross transactions under NYSE Rule 127. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under Rule 476A procedures.[1]

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.

[1] Concurrently with the proposed rule change, the Exchange is seeking to amend its Rule 19d–1(c)(2) reporting plan for Rule 476A violations (''Minor Rule Violation Plan'') to include the items proposed for addition to the list of rules subject to Rule 476A. *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 27, 1995.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A [2] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules, which are eligible for 476A procedures, specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of Rule 476A as experience with it was gained .

The Exchange is presently seeking approval to add to the 476A List of Rules subject to possible imposition of fines under Rule 476A procedures the failure by members or member organizations to adhere to certain procedures under NYSE Rule 127 for execution of block cross transactions at a price that is outside of the NYSE best bid or offer.[3] Specifically, the Exchange would view the failure to fulfill the requirement to satisfy public limit orders at the clean-up price when a position is established or increased for a member's or member organization's proprietary account as one type of violation for which a fine pursuant to Rule 476A might be imposed.[4] In addition, failure to utilize the procedure of NYSE Rule 127 to satisfy all better-priced limit orders when effecting block crosses outside the currently quoted market would also be considered a violation for which a fine pursuant to Rule 476A might be imposed.

The Exchange is also seeking to add to the 476A List failure by members or member organizations to follow the procedures of NYSE Rule 95 with respect to prohibition of transactions by members on the Floor involving discretion as to (1) choice of security, (2) total amount of security to be bought or sold, or (3) whether a transaction is to be a purchase or a sale. The Exchange is also seeking to add to the 476A List of failure to appropriately identify a liquidating order pursuant to NYSE Rule 95(c) (all liquidating orders effected pursuant to Rule 95(c) must be marked on the Floor as ''BC'' in the case of an order covering a short position or ''SLQ'' in the case of the sell order liquidating a long position).

The Exchange is also seeking to add to the 476A List misstatements or omissions of fact on applications for membership approval, financial statements, reports or other submissions filed with the Exchange as provided in NYSE Rule 476(a)(10). The Exchange would be careful to distinguish misstatements or omissions of facts from willfully made false or misleading statements and omissions of material fact, as a finding by the Exchange of conduct in the latter two categories could cause an individual or entity to be subject to a statutory disqualification as defined in Section 3(a)(39)(F) of the Act. Moreover, in appropriate circumstances (*e.g.*, findings of a pattern of misstatements or omissions), the Exchange would not use the procedures under Rule 476A to address the conduct.

While the Exchange, upon investigation, may determine that a violation of these procedures is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response.

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date or Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[2] Rule 476A was approved by the Commission on January 25, 1985. *See* Securities Exchange Act Release No. 21688 (Jan. 25, 1985), 50 FR 5025 (Feb. 5, 1985). For subsequent additions of rules to the Rule 476A Violations List *see, e.g.*, Securities Exchange Act Release Nos. 22037 (May 14, 1985), 50 FR 12213 (May 21, 1985); 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985); 22490 (Oct. 2, 1985), 50 FR 41084 (Oct. 8, 1985); 23104 (Apr. 11, 1986), 51 FR 13307 (Apr. 18, 1986); 24935 (Oct. 22, 1987), 52 FR 23820 (Oct. 29, 1987), 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988); 27878 (Apr. 4, 1990), 55 FR 13345 (Apr. 10, 1990); 28003 (May 9, 1990), 55 FR 20004 (May 14, 1990); 28505 (Oct. 2, 1990), 55 FR 41288 (Oct. 10, 1990); 28995 (Mar. 28, 1991), 56 FR 12967 (Mar. 28, 1991); 30280 (Jan. 22, 1992), 57 FR 3452 (Jan. 29, 1992); 30536 (Mar. 31, 1992), 57 FR 12357 (Apr. 9, 1992); 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993); 33403 (Dec. 28, 1993), 59 FR 641 (Jan. 5, 1994); 33816 (Mar. 25, 1994), 59 FR 15471 (Apr. 1, 1994); 34230 (June 17, 1994), 59 FR 32727 (June 24, 1994).

[3] In Securities Exchange Act Release No. 35103 (Dec. 15, 1994), 59 FR 65835 (Dec. 21, 1994), the Commission approved amendments to NYSE Rule 127 involving revised procedures for handling such blocks.

[4] The Exchange would not seek to review a member's initial determination as to whether the member would incur excessive stock loss by satisfying all orders at the clean-up price. Given the member's initial determination as to which of NYSE Rule 127's procedures to use, the Exchange would regard the failure to adhere to the requirements of the rule to satisfy public orders limited to the clean-up price at that price before retaining stock for the member organization's proprietary account as a possible minor violation.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–45 and should be submitted by February 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1472 Filed 1–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36746; International Series Release No. 919; File No. SR–PHLX–95–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options

January 19, 1996.

On March 10, 1995, as subsequently amended below, 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 Rules 1001, ''Position Limits,'' [3] and 1002, ''Exercise Limits,'' [4] to increase the position and exercise limits for all foreign currency options (''FCOs''), except for options on the Italian lira and the Spanish peseta, to 200,000 contracts.[5] The PHLX subsequently filed Amendment Nos. 1, 2,[6] and 3 [7] to the proposed rule change on April 5, 1995, May 2, 1995, and December 20, 1995, respectively.

Notice of the proposed rule change and Amendment Nos. 1 and 2 appeared in the Federal Register on May 16, 1995.[8] No comments were received on the proposal.

Currently, PHLX Rules 1001 and 1002 establish the following position and exercise limits for FCOs: (i) 150,000 contracts for FCOs which meet an annual trading volume of at least 3,500,000 contracts; and (ii) 100,000 contracts for all other FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for all FCOs, except for options on the Italian lira and the Spanish peseta,[9] to 200,000 contracts.

PHLX FCO position and exercise limits were set initially at 10,000 contracts in 1982, when FCOs first began trading on the Exchange.[10] Since that time, the position and exercise limits have been raised four times.[11] In 1993, the Exchange filed a proposal to adopt a two-tiered approach to FCO position and exercise limits, which was approved by the Commission in September 1994.[12] According to the PHLX, many of the factors cited at that time continue to indicate that FCO position and exercise limits warrant an increase to 200,000 contracts. For example, the Chicago Mercantile Exchange (''CME'') substituted ''position accountability standards'' [13] for position limits for futures and futures options on certain foreign currencies.[14] As a result, the PHLX believes that the Exchange is placed at a serious competitive disadvantage.

In addition, the Exchange has commenced trading customized FCOs,[15] in which positions are aggregated with other FCO positions in the underlying currency; however, customized option trading volume is not included in the volume calculation to determine the applicable position limit under the current two-tiered system. In addition to customized options, there are also other FCO products that are aggregated for position and exercise limit purposes, including long-term, month-end, cash/spot, and American- and European-style FCOs.[16] According to the PHLX, FCO

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b-4 (1995).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls).

[4] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[5] *See* note 7, *infra*, and accompanying text.

[6] On April 5, 1995, the PHLX submitted a revised version of the text of the proposed rule change, which amends the text to indicate that the proposed position and exercise limit for FCOs is 200,000 contracts. *See* Letter from Edith Hallahan, Special Counsel, Regulatory Services, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 5, 1995 (''Amendment No. 1''). On April 26, 1995, the PHLX amended PHLX Rule 1001, Commentary .05(c), to (1) replace references to the current FCO position limits with references to the proposed FCO position limit; (2) designate current paragraph (c) as paragraph (b), in order to reflect the deletion of current paragraph (b); and (3) provide that the position and exercise limit for customized and non-customized contracts on the German mark/Japanese yen cross-rate and the British pound/German mark cross-rate options, as well as for cross-rate options traded pursuant to PHLX Rule 1069, ''Customized Foreign Currency Options,'' is 200,000 contracts. *See* Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 26, 1995 (''Amendment No. 2'').

[7] The PHLX amended its proposal to provide that options on the Italian lira and the Spanish peseta will continue to be subject to their current position and exercise limits of 100,000 contracts. The Exchange also indicated that, under the proposal, the aggregation principles provided in PHLX Rule 1001 will continue to apply. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 20, 1995 (''Amendment No. 3'').

[8] *See* Securities Exchange Act Release No. 35688 (May 8, 1995), 60 FR 26062.

[9] As noted above, the position and exercise limits for options on the Italian lira and the Spanish peseta will continue to be 100,000 contracts. *See* Amendment No. 3, *supra* note 7.

[10] *See* Securities Exchange Act Release no. 19313 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving File No. SR–PHLX–81–4).

[11] *See* Securities Exchange Act Release Nos. 21676 (January 18, 1985), 50 FR 3859 (January 28, 1985) (order approving File No. SR–PHLX–84–18 (increasing position limits from 10,000 to 25,000 contracts); 22479 (September 27, 1985), 50 FR 41276 (October 9, 1985) (order approving File No. SR–PHLX–85–22) (increasing position limits to 50,000 contracts); 23710 (October 15, 1986), 51 FR 37691 (October 23, 1986) (order approving File No. SR–PHLX–86–24) (increasing position limits to 100,000 contracts); and 34712 (September 23, 1994), 59 FR 50307 (October 3, 1994) (order approving File No. SR–PHLX–93–13) (adopting position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts).

[12] *See* Securities Exchange Act Release No. 34712, *supra* note 10.

[13] Position accountability standards require traders who own or control positions in excess of established limits to provide to the exchange, upon request, information regarding the nature of the position and the trading strategy employed.

[14] *See* Letter from Jean A. Webb, Secretary, Commodity Futures trading Commission (''CFTC''), to Todd E. Petzel, Senior Vice President, Research, and Chief Economist, CME, dated January 2, 1992. *See also* Speculative Position Limits—Exemption from CFTC Rule 1.61; CME Proposed Amendments to Rules 3902.D, 5001.E, 3010.F, 3012.F, 3013.F, 3015.F, 4604, and Deletion of Rules 3902.F, 5001.G, 3010.H., 3012.H, 3013.H, and 3015.H.

[15] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (order approving File No. SR–PHLX–94–18).

[16] *See e.g.*, Securities Exchange Act Release Nos. 30672 (May 6, 1992), 57 FR 20546 (May 13, 1992) (order approving File No. SR–PHLX–91–30) (aggregating long-term FCOs); 30945 (July 21, 1992), 57 FR 33381 (July 28, 1992) (order approving File No. SR–PHLX–92–13) (aggregating month-end FCOs); 33732 (March 8, 1994), 59 FR 12023 (March

participants have continued to accumulate positions near existing limits. If large traders continue to be restricted by the current position and exercise limit levels, the PHLX believes that trading interest could migrate to the over-the-counter (''OTC'') market, hampering PHLX liquidity. The Exchange believes that a higher position and exercise limit may enable such traders to consider, or return to, an exchange marketplace for their FCO trading, thereby increasing the liquidity of the PHLX's FCO markets. The PHLX believes that increases are particularly appropriate because the FCO market attracts a large number of institutional and corporate investors with substantial hedging needs. According to the Exchange, these investors utilize the PHLX marketplace by participating in block size transactions in FCOs to hedge exposure to fluctuations in exchange rates.

Since the most recent increase in position and exercise limits, the Exchange has continued to examine FCO position and exercise limits in light of the underlying currency market. The PHLX estimates that the size of the worldwide currency market has grown exponentially. For example, in 1989, total gross global foreign exchange turnover was estimated to be $932 billion per day and net global turnover was estimated to be $640 billion per day.[17] In 1992, total gross global foreign exchange turnover was estimated to be $1.354 billion per day, which represents a 35% increase since 1989. Further, global ''net-net'' exchange market turnover was estimated at $880 billion; this takes into account local and cross-border double counting and estimated gaps in reporting.[18]

Further, the PHLX believes that, as a percentage of total global currency turnover, the impact of a PHLX FCO position, even at 200,000 contracts, is minimal.[19]

The Exchange also believes that the proposed increase is reasonable in light of prior position and exercise limit increases. The 1992 increase represents a 50% increase in the two affected options. Previously, the Commission approved increases of 150%, 100%, and 100%.[20] Accordingly, the PHLX believes that the current proposal to raise by 100% the position and exercise limits for all FCOs, except options on the Italian lira and the Spanish peseta, is in line with prior changes, and specifically does not create a higher increase than any prior one.

Because of the large size of the underlying market in foreign currencies, the PHLX does not believe that manipulative concerns would be enhanced if the limits for FCOs were increased. In this regard, the Exchange notes that its surveillance procedures are designed to detect violations of these limits. In addition, the PHLX notes that the proposal will eliminate the fluctuations in limits inherent in a volume-based approach.

For these reasons, and in light of these market changes, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The PHLX believes that the proposal will increase the depth and liquidity of the FCO market which, in turn, should result in position and exercise limit levels that serve the purposes of protecting investors and the public interest as well as preventing unfair acts and practices, such as manipulation.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[21] Specifically, the Commission believes that the proposal to increase the position and exercise limits for all FCOs, except for options on the Italian lira and the Spanish peseta, should help to accommodate the needs of investors and market participants while helping to increase the depth and liquidity of the PHLX's FCO market. The proposal should also simplify the PHLX's rules by establishing limits that will not change periodically based on trading volume in the FCO as exists under the PHLX's current rules.

The Commission believes, as it has stated in the past, that although position and exercise limits for FCOs must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market.[22] In its proposal, the PHLX states that the FCO market attracts a large number of corporate and institutional investors who have substantial needs and who execute block-sized transactions in FCOs. In addition, the PHLX believes that trading could migrate to the OTC market if traders continue to be restricted by the PHLX's current FCO position and exercise limits. In light of the size of the FCO market and the needs of FCO investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants and to help the Exchange remain competitive with the OTC market for FCOs.

At the same time, the Commission does not believe that the proposal significantly increases concerns regarding intermarket manipulations or disruptions of the markets for FCOs or the underlying currencies. The Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprise of banks and other financial institutions worldwide.[23] That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active OTC market also exists in FCOs.

Moreover, the absence of discernible manipulative problems under the current FCO position and exercise limits leads the Commission to conclude that

15, 1994) (order approving File No. SR–PHLX–93–10) (aggregating cash/spot FCOs); and 24859 (August 27, 1987), 52 FR 33493 (September 3, 1987) (order approving File No. SR–PHLX–87–24) (aggregating European-style contracts).

[17] *See* Bank for International Settlements (''BIS'') Central Bank Survey of Foreign Exchange Market Activity in 1989.

[18] *See* BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992 (March 1993).

[19] According to the PHLX, 200,000 contracts would represent less than 2% of the daily international currency transaction volume in the Deutsche mark; 22% of the daily international currency transaction volume in the Australian dollar; 5% of the daily international currency transaction volume in the British pound; 16% of the daily international currency transaction volume in the Canadian dollar; 19% of the daily international currency transaction volume in the French franc; 8% of the daily international currency transaction volume in the Swiss franc; and 4% of the daily international currency transaction volume in the Japanese yen. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated May 18, 1995.

[20] In 1985, the first increase from 10,000 contracts to 25,000 contracts represented a 150% change while the second increase from 25,000 to 50,000 contracts represented a 100% increase; similarly, the 1986 change to 100,000 contracts represented a 100% change. The proposed changes, from 150,000 to 200,000 contracts, and from 100,000 to 200,000 contracts, represent changes of 33% and 100%, respectively.

[21] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[22] *See* Securities Exchange Act Release Nos. 22479 and 34712, *supra* note 10.

[23] *See* Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399 (December 30, 1992) (order approving File No. SR–Amex–92–36).

the proposed increase is warranted. The Commission recognizes, as it has stated in the past, that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns.[24] The PHLX and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under the current limit as an indicator that additional increase can be safely considered. The Commission believes for these reasons that the proposed liberalization of existing FCO position and exercise limits is appropriate.[25]

In addition, the Commission believes that the PHLX's surveillance programs will be adequate to detect and deter position and exercise limit violations by market participants as well as detect and deter attempted manipulative activity and other trading abuses.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 3 clarifies the Exchange's proposal by indicating that the proposed rule change does not alter the aggregation principles contained in PHLX Rule 1001. In addition, Amendment No. 3 provides that the position and exercise limits for options on the Italian lira and the Spanish peseta will continue to be 100,000 contracts. This clarification was necessary because at the time the proposal was originally submitted the PHLX did not have approval to trade those FCOs. In addition, the Commission believes that the 100,000 contract limit for options on the Italian lira and the Spanish peseta should remain unchanged at this time because the PHLX trades only customized options on those currencies and the market for those currencies may not be as deep and liquid as the market for other FCOs traded by the PHLX. Based on the above, the Commission finds good cause to accelerate approval of Amendment No. 3.

[24] *See* Securities Exchange Act Release No. 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR–PHLX–93–07).

[25] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, the Commission has concluded that the exercise limit increase does not raise manipulation problems or increase concerns over market disruption in the underlying currencies.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–PHLX–95–13), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1471 Filed 1–26–96; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. § 78s(b)(2) (1982).

[27] 17 CFR 200.30–3(a)(12) (1995).

[Rel. No. IC–21693; File No. 811–2155]

Select Capital Growth Fund, Inc.

January 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANT: Select Capital Growth Fund, Inc. (''Select Capital'').

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Application seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 19, 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 Secretary of the SEC 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 16, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Pubic Reference Branch of the SEC.

Applicant's Representations

1. Select Capital is organized as a Minnesota corporation, and is registered under the 1940 Act as an open-end diversified management investment company. On December 28, 1970,[1] Applicant filed a registration statement under Section 8(b) of the 1940 Act, and a registration statement on Form S–5 under the Securities Act of 1933 registering an unlimited number of shares of common stock, having no designated par value (File No. 2–39128). The Form S–5 registration statement became effective on August 13, 1971, and the initial public offering commenced on August 16, 1971.

2. Applicant's only security holders were Northwestern National Life Insurance Company (''NWNL'') and sub-accounts of NWNL Select Variable Account and Select*Life Variable Account (the ''Variable Accounts'').

3. On November 1, 1994, Applicant's board of directors unanimously (i) approved the substitution of shares of the Growth Portfolio of the Variable Insurance Products Fund (the ''Fidelity Growth Portfolio'') for shares of Applicant held by the Variable

[1] This date is derived from the SEC's computerized data retrieval system.

Accounts (the ''Substitution''), and (ii) resolved that, contingent on shareholder approval of the Substitution and receipt of approval of the Substitution by the SEC, Applicant be liquidated and dissolved pursuant to Minnesota law. On December 21, 1994, the beneficial owners of the shares of common stock of Applicant approved the Substitution. On December 21, 1994, NWNL approved a plan of liquidation and dissolution (the ''Plan'') for Applicant.

4. On May 1, 1995, pursuant to an SEC staff no-action position letter, dated April 10, 1995 (Ref. No. IP–1–95), shares of Applicant held by the Variable Accounts where redeemed by NWNL, leaving NWNL as the sole security holder of Applicant. The proceeds of that redemption were used to purchase shares of the Growth Portfolio. On May 23, 1995, NWNL, as the sole security holder of Applicant, approved a proposal to liquidate and dissolve Applicant pursuant to the Plan. Applicant completed its liquidation and distributed its remaining assets ($100) to NWNL on May 24, 1995.

5. Applicant has no assets or security holders. Applicant is not a party to any litigation or administrative proceeding and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders Applicant.

7. The only outstanding debts Applicant, for which Applicant has not received final invoices, are approximately $15,000 in 1994 audit fees and fees for tax preparation services. Northstar Investment Management Corporation (''Northstar''), Applicant's investment adviser, has agreed to pay these fees on behalf of Applicant, pursuant to the reimbursement arrangement contained in the investment advisory agreement between Applicant and Northstar.

8. The only expenses associated with the liquidation of Applicant are brokerage commissions, legal and fund accounting services fees, and certain filing fees. These fees are expected to aggregate approximately $10,000, $2,500, and $70, respectively. NWNL and Northstar will pay all such expenses.

9. Applicant represents that it will continue to file all reports required by Rules 30a–1 and 30b–1 under the 1940 Act until the requested order is granted.

10. Applicant intends to file Articles of Dissolution with the State of Minnesota to terminate its existence as a Minnesota corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1477 Filed 1–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21694; File No. 811–4487]

Select Managed Fund, Inc.

January 22, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANT: Select Managed Fund, Inc. (''Select Managed'').

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 19, 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 Secretary of the SEC 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 16, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Select Managed is organized as a Minnesota corporation, and is registered under the 1940 Act as an open-end diversified management investment company. On October 9, 1985,[1] Applicant filed a registration statement under Section 8(b) of the 1940 Act, and a registration statement on Form N–1A under the Securities Act of 1933 registering an unlimited number of shares of common stock, having no designated par value (File No. 33–765). The Form N–1A registration statement became effective and the initial public offering commenced on March 3, 1986.

2. Applicant's only security holders were Northwestern National Life Insurance Company (''NWNL'') and sub-accounts of NWNL Select Variable Account and Select*Life Variable Account (the ''Variable Accounts'').

3. On November 1, 1994, Applicant's board of directors unanimously (i) approved the substitution of shares of the Growth Portfolio of the Variable Insurance Products Fund (the ''Fidelity Growth Portfolio'') for shares of Applicant held by the Variable Accounts (the ''Substitution''), and (ii) resolved that, contingent on shareholder approval of the Substitution and receipt of approval of the Substitution by the SEC, Applicant be liquidated and dissolved pursuant to Minnesota law. On December 21, 1994, the beneficial owners of the shares of common stock of Applicant approved the Substitution. On December 21, 1994, NWNL approved a plan of liquidation and dissolution (the ''Plan'') for Applicant.

4. On May 1 1995, pursuant to an SEC staff no-action position letter, dated April 10, 1995 (Ref. No. IP–1–95), shares of Applicant held by the Variable Accounts were redeemed by NWNL, leaving NWNL as the sole security holder of Applicant. The proceeds of that redemption were used to purchase shares of the Asset Manager Portfolio of the Variable Insurance Products Fund II. On May 23, 1995, NWNL, as the sole security holder of Applicant, approved a proposal to liquidate and dissolve Applicant pursuant to the Plan. Applicant completed its liquidation and distributed its remaining assets ($100) to NWNL on May 24, 1995.

5. Applicant has no assets or security holders. Applicant is not a party to any litigation or administrative proceeding and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding-up of its affairs.

[1] This date is derived from the SEC's computerized data retrieval system.

6. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

7. The only outstanding debts of Applicant, for which Applicant has not received final invoices, are approximately $15,000 in 1994 audit fees and fees for tax preparation services. Northstar Investment Management Corporation (''Northstar''), Applicant's investment adviser, has agreed to pay these fees on behalf of Applicant, pursuant to the reimbursement arrangement contained in the investment advisory agreement between Applicant and Northstar.

8. The only expenses associated with the liquidation of Applicant are brokerage commissions, legal and fund accounting services fees, and certain filing fees. These fees are expected to aggregate approximately $10,000, $2,500, and $70, respectively. NWNL and Northstar will pay all such expenses.

9. Applicant represents that it will continue to file all reports required by Rules 30a–1 and 30b–1 under the 1940 Act until the requested order is granted.

10. Applicant intends to file Articles of Dissolution with the State of Minnesota to terminate its existence as a Minnesota corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1478 Filed 1–26–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2320]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–97) Visa Program

ACTION: Notice of registration for the third year of the Diversity Immigrant Visa Program.

This public notice provides information on the application procedures for the 55,000 immigrant visas to be made available in the DV category during Fiscal Year 1997. This notice is issued pursuant to 22 CFR 42.33 which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154). The Department published regulations related to this Notice in the Federal Register on January 22, 1996. [61 FR 1523.]

Information on the Application Procedures for the 55,000 Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 1997.

Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, taken together establish, effective for Fiscal Year 1997 and thereafter, an annual numerical limitation of 55,000 for diversity immigrant visas to persons from countries that have low rates of immigration to the United States. The DV–97 registration mail-in period will last one month and will be held from February 12, 1996 to March 12, 1996. This will give those eligible, both in the United States and overseas, ample time to mail in an entry.

How Are the Visas Being Apportioned?

The visas will be apportioned among six geographic regions. A greater number of visas will go to those regions that have lower immigration rates. There is, however, a limit of seven percent or 3,850 on the use of visas by natives of any one foreign state. The regions along with their Fiscal Year 1997 allotments are:

Africa: (20,623) Includes all countries on the continent of Africa and adjacent islands.

Asia: (7,187) Extends from Israel to all North Pacific Islands, including Indonesia.

Europe: (23,910) Extends from Greenland to Russia and includes all countries of the former Soviet Union.

North America: (8) Includes only one qualified country this year, The Bahamas.

Oceania: (817) Includes Australia, New Zealand, Papua New Guinea, and all countries and islands in the South Pacific.

South America: (2,455) Includes Central America, Mexico and the Caribbean countries.

Who Is Eligible?

Individuals born in countries that have significant numbers of immigrants to the United States are considered ''high admission'' and are not eligible for the program. ''High admission'' countries are defined as those from which the United States has received 50,000 or more immigrants during the last five years in the immediate relative, or family or employment preference categories. For 1997, ''high admission'' countries are:

China (mainland and Taiwan),
India,
The Philippines,
Vietnam,
South Korea,
United Kingdom and dependent territories (except Hong Kong and Northern Ireland),
Canada,
Mexico,
Jamaica,
El Salvador,
Colombia, and
The Dominican Republic.

Natives of Hong Kong and Northern Ireland are eligible to apply for this year's lottery.

What are the Requirements?

In addition to being born in a qualifying country, applicants must have either a high school education or its equivalent, or within the past five years have two years of work experience in an occupation that requires at least two years of training or experience.

There is no initial application fee or special application form to enter. The entry must be typed or clearly printed in the English alphabet on a sheet of plain paper, MUST BE SIGNED BY THE APPLICANT, and should include the following:

1. *Applicant's Full Name:*

Last Name, First Name and Middle Name
(Underline Last Name/Surname/Family Name)
Example: *Public,* George Quincy.

2. *Applicant's Date and Place of Birth:*

Date of birth: Day, Month, Year
Example: 15 November 1961
Place of birth: City/Town, District/County/Province, Country
Example: Munich, Bavaria, Germany

3. *Name, Date and Place of Birth of Applicant's Spouse and Minor Children, if any:*

The spouse and child(ren) of an applicant who is registered for DV–97 status are automatically entitled to the same status. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried. NOTE: DO NOT list parents as they are not entitled to derivative status.

4. *Applicant's Mailing Address, and phone number, if possible:*

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent. A telephone number is optional.

5. *Applicant's Native Country if Different from Country of Birth*

6. *Applicant's Signature is Required on the Application*

7. *A Recent 1½ Inch by 1½ Inch Photograph of the Applicant:* The applicant's name must be printed across the back of the photograph.

This information must be sent by regular mail to one of six postal

addresses in Portsmouth, New Hampshire. Applicants must use the correct postal zip code designated for their native region (see addresses below). Entries must be mailed in a regular letter or business-size envelope with the applicant's native country, full name, mailing address, and country of residence typed or clearly printed in the English alphabet in the upper left-hand corner of the envelope. Postcards are not acceptable.

Only one entry for each applicant may be submitted during the registration period. Duplicate or multiple entries will disqualify individuals from registration for this program. Entries received before or after the specified registration dates regardless of when they are postmarked and entries sent to an address other than one of those indicated below are void. All mail received during the registration period will be individually numbered and entries will be selected at random by computer regardless of time of receipt during the mail-in period.

Where Should Entries Be Sent?

Note Carefully the Importance of Using the Correct Postal ZIP Code for Each Region.

Asia: DV–97 Program, National Visa Center, Portsmouth, NH 00210, USA.

South America: DV–97 Program, National Visa Center, Portsmouth, NH 00211, USA.

Europe: DV–97 Program, National Visa Center, Portsmouth, NH 00212, USA.

Africa: DV–97 Program, National Visa Center, Portsmouth, NH 00213, USA.

Oceania: DV–97 Program, National Visa Center, Portsmouth, NH 00214, USA.

North America: DV–97 Program, National Visa Center, Portsmouth, NH 00215, USA.

Is It Necessary To Use an Outside Attorney or Consultant?

The decision to hire an attorney or consultant is entirely up to the applicant. Procedures for entering the Diversity Lottery can be completed without assistance following simple instructions. However, if applicants prefer to use outside assistance, that is their choice. There are many legitimate attorneys and immigration consultants assisting applicants for reasonable fees, or in some cases for free. Unfortunately, there are other persons who are charging exorbitant rates and making unrealistic claims. The selection of winners is made at random and no outside service can improve an applicant's chances of being chosen or guarantee an entry will win. Any service that claims it can improve an applicant's odds would be promising something it cannot deliver.

Persons who think they have been cheated by a U.S. company or consultant in connection with the Diversity Visa Lottery may wish to contact their local consumer affairs office or the National Fraud Information Center at 1–800–876–7060. The U.S. Department of State has no authority to investigate complaints against businesses in the United States.

How Will Winners Be Notified?

Only successful registrants will be notified by mail at the address listed on their entry. The notifications will be sent to the winners no later than July 1, 1996 along with instructions on how to apply for an immigrant visa. Applicants must meet all eligibility requirements under U.S. law to be issued a visa.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa because the number of applications selected is greater than the number of immigrant visas available. Those selected will, therefore, need to act on their immigrant visa applications quickly. Once the total 55,000 visas have been issued, the DV Program for Fiscal Year 1997 will end.

A visa lottery hotline has been set up to provide additional information on the DV–97 Program. The 24-hour number is (202) 663–1600. Printed information will also be available by FAX by dialing (202) 647–3000 (Code 1103) from a FAX phone, or may be obtained from U.S. Embassies and Consulates overseas.

Dated: January 17, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–1224 Filed 1–26–96; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee Termination

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Civil Tiltrotor Development Advisory Committee Termination.

SUMMARY: Notice is hereby given of the termination of the Civil Tiltrotor Development Advisory Committee. The committee was established to evaluate the technical feasibility and economic viability of developing civil tiltrotor aircraft and a national system of infrastructure to support the incorporation of tiltrotor aircraft technology into the national transportation system.

The committee was terminated after submission of its report to Congress on December 29, 1995, and its continuation is no longer in the public interest in connection with the performance of FAA by law.

FOR FURTHER INFORMATION CONTACT: Robert Smith, (AND–610), Office of Communications, Navigation and Surveillance systems, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3783.

Issued in Washington, DC, on January 19, 1996.

Robert D. Smith,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 96–1444 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: Metropolitan Nashville Airport Authority, One Terminal Drive, Suite 501, Nashville, Tennessee 37214–4114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Harris, Planner, Memphis Airports District Office, 2851 Directors

Cove, Suite 3, Memphis, Tennessee 38131–0301; telephone number 901–544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Nashville International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Metropolitan Nashville Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 18, 1996.

The following is a brief overview of the application.

PFC application number: 96–02–U–00–BNA

Level of the PFC: $3.00

Actual charge effective date: January 1, 1993

Estimated charge expiration date: December 1, 2001

Total estimated PFC revenue: $99,443,000

Total amount of use approval requested in this application: $11,713,300

Brief description of proposed project(s): Construct Concourse Connector—Construct International Arrivals Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 (air taxi) operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee, on January 19, 1996.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 96–1439 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Availability of Scoping Paper for Environmental Impact Statement, Proposed Terminal Doppler Weather Radar To Serve John F. Kennedy International and La Guardia Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA announces the availability of a Scoping Paper for the Environmental Impact Statement (EIS) for Terminal Doppler Weather Radar (TDWR) to serve John F. Kennedy International and La Guardia Airports. In accordance with requirements of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA is conducting a scoping process to determine the issues and alternatives to be analyzed in this EIS. The Scoping Paper outlines objectives and procedures of the scoping process and technical issues to be addressed in the EIS. Copies of the Scoping Paper are available upon request to the FAA.

SUPPLEMENTARY INFORMATION: The FAA announces the availability of a Scoping Paper for the Environmental Impact Statement (EIS) for Terminal Doppler Weather Radar (TDWR) to serve John F. Kennedy International and La Guardia Airports. In accordance with requirements of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA is conducting a scoping process to determine the issues and alternatives to be analyzed in this EIS.

The Scoping Paper covers the objectives of the scoping process, procedures to be followed by the FAA during the scoping process, planned times and locations of public scoping meetings, the proposed action and alternatives to be addressed in the EIS and anticipated environmental issues. The Scoping Paper also lists the EIS core team members and agencies likely to participate in the EIS process, and includes a draft outline for the EIS. Comments from interested parties on the scope of the EIS and the contents of the Scoping Paper are encouraged and may be submitted to the FAA in writing to the address given below or presented verbally at the scoping meetings. Times and locations of the scoping meetings are given in the Scoping Paper. Written comments must be received by April 2, 1996. Comments should discuss environmental concerns and issues related to the proposed action, suggested analyses and methodologies for inclusion in the EIS, possible sources of relevant data or information, or feasible alternatives to the proposed action.

Copies of the Scoping Paper are available upon request to the FAA or may be obtained at the scoping meetings. Written requests for copies of the Scoping Paper and written comments on the Scoping Paper should be addressed to FAA as follows: Federal Aviation Administration, Office of the Chief Counsel, Attention: Docket (AGC–200) Docket No. 28365, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Wind Shear Products Team, AND–420, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 358–4946.

Issued in Washington, DC on January 23, 1996.

Loni Czekalski,

Director of Communications, Navigation, and Surveillance Systems, AND–1.

[FR Doc. 96–1536 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Public Scoping Meetings for Environmental Impact Statement, Proposed Terminal Doppler Weather Radar To Serve John F. Kennedy International and La Guardia Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: In accordance with requirements of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA is preparing an Environmental Impact Statement (EIS) for Terminal Doppler Weather Radar (TDWR) to serve John F. Kennedy International and La Guardia Airports. The FAA will conduct scoping meetings to obtain public comments on the issues and alternatives to be analyzed in this EIS. Meetings will be held during March 5–7, 1996, at various locations in Brooklyn and Queens, New York, and will be open to all interested parties.

SUPPLEMENTARY INFORMATION: In accordance with requirements of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA is conducting a scoping process to determine the issues and alternatives to be analyzed in Environmental Impact Statement (EIS) for Terminal Doppler Weather Radar (TDWR) to serve John F. Kennedy International and La Guardia Airports. The FAA intends to conduct four public

scoping meetings for this EIS at the times and locations listed under the heading **DATES AND LOCATIONS**. Sign interpretation can be made available at a meeting if requested 10 calendar days before the specific meeting at which the service is required.

Comments from interested parties on the scope of the EIS are encouraged and should be submitted to the FAA in writing or presented verbally at the scoping meetings. Written comments must be received by April 2, 1996. Comments should discuss environmental concerns and issues related to the proposed action, suggested analyses and methodologies for inclusion in the EIS, possible sources of relevant data or information or feasible alternatives to the proposed action. Submit written comments to Federal Aviation Administration, Office of the Chief Counsel, Attention: Docket (AGC–200), Docket No. 28365, 800 Independence Avenue, SW., Washington DC 20591.

DATES AND LOCATIONS: March 5, 1996, 7–10 p.m., Travel Lodge, Building #144, JFK International Airport, Jamaica, NY, 11430; March 6, 1996, 9 a.m.–12 noon and 7 p.m.–10 p.m., Kingsborough Community College, 2001 Oriental Avenue, Brooklyn, NY, 11235; March 7, 1996, 7 p.m.–10 p.m., Ramada Inn, 90–10 Grand Central Parkway, East Elmhurst, NY 11369.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Wind Shear Products Team, AND–420, 800 Independence Avenue, SW., Washington DC 20591, telephone (202) 358–4946.

Issued in Washington, DC, on January 23, 1996.

Loni Czekalski,

Director of Communications, Navigation, and Surveillance Systems, AND–1.

[FR Doc. 96–1535 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–57; Notice 2]

General Motors Corp.; Grant of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, determined that some of its vehicles failed to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' GM also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety''— on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on July 26, 1995, and an opportunity afforded for comment (60 FR 38392).

Paragraph S5.5.10(d) of FMVSS No. 108 requires that ''all other lamps [not mentioned in Paragraphs S5.5.10(a–c) which includes all stop lamps such as center high-mounted stop lamps (CHMSLs)] shall be wired to be steady-burning.''

During the 1995 model year, GM manufactured a total of 96,607 GMC and Chevrolet Suburban, GMC Yukon, and Chevrolet Tahoe vehicles with CHMSLs that were inadvertently wired in a manner which permits the CHMSLs to momentarily flash under certain conditions while the driver is in the process of activating or deactivating the hazard flashers. As a result, they do not meet the requirement of Paragraph S5.5.10(d) that they be ''wired to be steady-burning.'' While GM designed the vehicles to meet this requirement, it subsequently discovered a transient contact condition inside the multi-function (stop lamp, CHMSL, turn signal, and hazard flasher) switch which occasionally causes the CHMSL to flash while the driver is in the process of turning the hazard flasher switch ''on'' or ''off.'' The error was corrected in production in March 1995 by adding a brake lamp relay to the I/P harness to provide isolation from the multi-function switch transient.

GM supported its application for inconsequential noncompliance with the following:

The CHMSL performs properly at all times when the service brakes are applied. The transient condition will not occur if the service brakes are applied when the driver activates or deactivates the hazard flasher switch. Therefore, the CHMSL will not flash when it is required to be steady-burning. The CHMSL will not flash if the ignition switch is in the ''off'' position. Thus, the condition will not occur if the hazard flashers are turned ''off'' or ''on'' when the ignition is off and the vehicle is parked at the side of the road, for example.

If the CHMSL flashes at all, it will illuminate a maximum of three times during the transient condition, with each pulse lasting 0.5 [millisecond (ms)] to 4.0 ms. The entire unintended event, in its worst case, lasts no more than 125.8 ms. This extremely short duration is likely to go entirely unnoticed by following drivers in many instances. In the event that it is noticed, it is not likely to be confused with anything other than the hazard flashers. Since the flashers will be activated while the unintended condition occurs, but the brake lamps will not be, this will not present a safety risk.

The CHMSL otherwise meets all of the requirements of FMVSS 108.

In a 1989 interpretation, NHTSA discussed the difference between the requirements that stop lamps be steady-burning and hazard warning lights flash. NHTSA explained:

Standard No. 108 requires stop lamps to be steady-burning, and hazard warning signal lamps to flash (generally through the turn signal lamps). The primary reason for the distinction is that the stop lamps are intended to be operated while the vehicle is in motion, while hazard warning lamps are intended to indicate that the vehicle is stopped. Each lamp is intended to convey a single, easily recognizable signal. If a lamp which is ordinarily steady burning begins to flash, the agency is concerned that the signal will prove confusing to motorists, thereby diluting the effectiveness.

August 8, 1989 letter from S.P. Wood, Acting Chief Counsel, NHTSA, to L.P. Egley

While this condition technically causes a lamp which is ordinarily steady burning to begin to flash, it will not likely ''prove confusing to motorists, thereby diluting its effectiveness,'' because it will not occur if the service brakes are applied. Even if the condition were mistaken for a brake signal (which is doubtful since CHMSLs do not flash with brake lamp activation), the following driver would not likely react to it. According to recent research studies conducted by GM, as well as field data, it takes a following driver at least 0.5 seconds to react to a signal and apply the service brakes once [a] preceding vehicle's brake lamps are activated. Given the extremely short duration of the transient CHMSL condition, the misinterpreted signal would be gone long before the following driver could respond.

Hazard flashers are not frequently used. Thus, the exposure of following drivers to the noncompliant condition would be very limited. This is particularly true because of the transient nature of the condition, its short duration, and the fact that it will not occur at all if the service brakes are applied or the vehicle's ignition is off.

GM is not aware of any accidents, injuries, owner complaints, or field reports related to this condition.

No comments were received on the application.

GM states that ''[t]he entire unintended event, in its worst case, lasts no more than 125.8 ms.'' This is ⅛th of a second. As GM further stated, according its research studies and field data, it takes a following driver at least half a second to react to a signal and to apply the service brakes once a preceding vehicle's brakes are activated. NHTSA finds this a convincing argument that the transient activation of the CHMSL, a false signal, is highly unlikely to mislead a following driver

into applying the service brakes when there is no need to do so.

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, the applicant is hereby exempted from its obligations to provide notice of the noncompliance as required by 49 U.S.C. 30118, and to remedy the noncompliance as required by 49 U.S.C. 30120.

49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: January 23, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–1505 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 93–37, Notice 4]

Panoz Auto Development Co.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Panoz Auto Development Company of Hoschton, Ga., applied for a renewal of its exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on October 13, 1995, and an opportunity afforded for comment (60 FR 53454). This notice grants the renewal.

Panoz received NHTSA Exemption No. 93–5 from S4.1.4 of Standard No. 208, which was scheduled to expire August 1, 1995 (58 FR 43007). However, its application for renewal was filed on May 26, 1995, which was more than 60 days before the scheduled expiration date of its exemption. In accordance with 49 CFR 555.8(e), Panoz' filing of its application before the 60th day stays the expiration until the Administrator grants or denies the application for renewal.

Panoz's original exemption was granted pursuant to the representation that its Roadster would be equipped with a Ford-supplied driver and passenger airbag system, and would comply with Standard No. 208 by April 5, 1995, after estimated expenditures of $472,000. As of April 1993, the company had expended 750 man hours and $15,000 on the project.

According to its application for renewal:

> Panoz has continued the process of researching and developing the installation of a driver and passenger side airbag system on the Roadster since the original exemption petition was submitted to NHTSA on April 5, 1993. To date, an estimated 1680 man-hours and approximately $50,400 have been spent on this project.

Panoz uses a 5.0L Ford Mustang GT engine and five speed manual transmission in its car. Because ''the 1995 model year and associated emission components were revised by Ford'', this caused

> a delay in the implementation of the airbag system on the Roadster due to further research and development time requirements and expenditure of additional monies to evaluate the effects of these changes on the airbag adaptation program.

In addition, the applicant learned that Ford will be replacing the 5.0L engine and emission control system on the 1996 Mustang and other passenger cars with a modular 4.6L engine and associated emission components. The 1995 system does not meet 1996 On-Board Diagnostic emission control requirements, and Panoz will have to use the 1996 engine and emission control system in its cars. The majority of the money and man hours to date have been spent on adapting an airbag system to the 5.0L engine car, and the applicant is now concentrating on adapting it to a 4.6L engine car. Panoz listed eight types of modifications and testing necessary for compliance that would cost it $337,000 if compliance were required at the end of a one-year period. It has asked for a two-year renewal of its exemption.

Panoz sold 13 cars in 1993 and 13 more in 1994. It did not state its sales to date in 1995. At the time of its original petition, its cumulative net losses since incorporation in 1989 were $1,265,176. It lost an additional $249,478 in 1993 and $169,713 in 1994.

The applicant reiterated its original arguments that an exemption would be in the public interest and consistent with the objectives of traffic safety. Specifically, the Roadster is built in the United States and uses 100 percent U.S. components, bought from Ford and approximately 75 other companies. It provides full time employment for 7 persons, and ''at least 200 employees from over 80 different companies remain involved in the Panoz project.'' The Roadster is said to ''provide the public with a classic alternative to current production vehicles.'' It is the only vehicle that incorporates ''molded aluminum body panels for the entire car'', a process which is being evaluated by other manufacturers and which ''results in the reduction of overall vehicle weight, improved fuel efficiency, and increased body strength.'' With the exception of S4.1.4 of Standard No. 208, the Roadster meets all other Federal motor vehicle safety standards including the 1997 side impact provisions of Standard No. 214.

No comments were received on the application.

Since its incorporation in 1989, the applicant's cumulative net loss exceeds $1,600,000. Its estimated cost of $337,000 for immediate conformance is a convincing hardship argument. In addition, the on-going compliance efforts of the company with respect to two Ford engine configurations indicate that the company continues to make a good faith effort to comply with Standard No. 208. This American-made vehicle is represented as meeting all remaining Federal motor vehicle safety standards, and will comply with new side intrusion requirements in advance of its effective date. A renewal of the exemption is merited.

In consideration of the foregoing, it is hereby found that to require immediate compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that has in good faith attempted to meet the standard, and that an exemption would be in the public interest and consistent with the objectives of traffic safety.

Accordingly, NHTSA Exemption No. 93–5 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* is hereby extended to expire November 1, 1997.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on January 23, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–1504 Filed 1–26–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Ex Parte No. 526]

Notice of Establishment of Railroad-Shipper Transportation Advisory Council and Request for Recommendation of Candidates for Membership

AGENCY: Surface Transportation Board.

ACTION: Request For Recommendation of Candidates For Membership on Railroad-Shipper Transportation Advisory Council.

SUMMARY: As provided by section 726 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, the Railroad-Shipper Transportation Advisory Council (Council) is established to advise the Chairman of the Surface Transportation Board (Board), the Secretary of Transportation, and Congressional oversight committees with respect to rail transportation policy issues of particular importance to small shippers and small railroads. To fulfill the duty of the Chairman of the Board to appoint Council members, this notice requests recommendations for membership on the Council from rail carriers and rail shippers.

DATES: Recommendations for Council members are due on February 13, 1996.

ADDRESSES: Send recommendations and supporting information (an original plus 3 copies) referring to STB Ex Parte No. 526, Railroad-Shipper Transportation Advisory Council to: Vernon A. Williams, Secretary, Surface Transportation Board, Room 1324, 1201 Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard S. Fitzsimmons, (202) 927–6050. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Railroad-Shipper Transportation Advisory Council was established upon the enactment of the ICC Termination Act of 1995 (the Act), on December 29, 1995, to advise the Board's Chairman, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues the Council considers significant. The Council will focus on issues of importance to small shippers and small railroads, including car supply, rates, competition, and procedures for addressing claims. The Act directs the Council to develop private-sector mechanisms to prevent, or identify and address, obstacles to the most effective and efficient transportation system practicable.

The Secretary of Transportation and the Chairman of the Board will cooperate with the Council in providing research, technical, and other reasonable support. To the extent the Council addresses specific grain car issues, it will coordinate its activities with the National Grain Car Council. The Council must also prepare an annual report concerning its activities and recommendations on whatever regulatory or legislative relief it considers appropriate. The Council is not subject to the Federal Advisory Committee Act.

Suggestions for candidates for membership on the Council and supporting information must be submitted to the Board by February 13, 1996. Suggestions for members of the Council should be submitted in letter form, identifying the name of the candidate and including evidence of the interests the candidate will represent. Council members must be citizens of the United States and represent as broadly as practicable the various segments of the railroad and rail shipper industries. They may not be full-time employees of the United States. The Council will consist of 19 members. Of this number, 15 members will be appointed by the Chairman of the Board, and the remaining four members will be comprised of the Secretary of Transportation and the Members of the Board, who will serve as ex officio, nonvoting members of the Council. Of the 15 members to be appointed, nine members will be the voting members of the Council and be appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries. At least four of the voting members must be representatives of small shippers as determined by the Chairman, and at least four of the voting members must be representatives of Class II or III railroads. The remaining six Council members to be appointed—three representing Class I railroads and three representing large shipper organizations—will serve in a nonvoting advisory capacity, but will be entitled to participate in Council deliberations.

The members of the Council will be appointed for a term of 3 years, except that of the members first appointed, five members will be appointed for terms of 1 year, and five members will be appointed for terms of 2 years, as designated by the Chairman at the time of appointment. A member may serve after the expiration of his or her term until a successor has taken office. No member will be eligible to serve in excess of two consecutive terms.

The Council will meet at least semi-annually and hold other meetings at the call of the Council Chairman. Federal facilities, where available, may be used for such meetings. The members of the Council shall receive no compensation for their services and, with regard to the availability of funding from the Board for support, the members will be required to provide for the expenses incidental to their service, including travel expenses, as the Board has limited appropriations and cannot at this time provide for these expenses. The Council Chairman, however, may request funding from the Department of Transportation to cover travel expenses, subject to certain restrictions in the Act. The Council also may solicit and use private funding for its activities, again subject to certain restrictions in the Act.

Decided: January 23, 1996.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams,

Secretary.

[FR Doc. 96–1537 Filed 1–26–96; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Enamels of Limoges'' (See list),[1] imported for abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, NY, on or about March 4, 1996 through June 16, 1996, is in the national interest. Public Notice of this determination is ordered to be published the Federal Register.

Dated: January 19, 1996

Les Jin,

General Counsel.

[FR Doc. 96–1562 Filed 1–26–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contracting Mrs. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Sunshine Act Meetings

Federal Register
Vol. 61, No. 19
Monday, January 29, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, February 2, 1996, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 24, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–1762 Filed 1–25–96; 3:06 pm]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Wednesday, January 31, 1996

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Wednesday, January 31, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—International—Title: Policy Statement on International Accounting Rate Reform. Summary: The Commission will consider issuing a policy statement that addresses accounting rate policies given changes in the international telecommunications market.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated January 24, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–1658 Filed 1–25–96; 1:27 pm]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 1256, January 18, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12 p.m., January 23, 1996.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting:

- Appointment of Federal Home Loan Bank Vice Chairs.

The following topics were added to the open portion of the meeting:

- Federal Home Loan Bank of Des Moines' First-time Homebuyer Set-Aside; and
- Federal Home Loan Bank of New York Request for Exception to the Financial Management Policy.

The Board determined that agency business required its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–1733 Filed 1–25–96; 3:06 pm]

BILLING CODE 6725–01–P

Corrections

Federal Register
Vol. 61, No. 19
Monday, January 29, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27993; Amdt. No. 121-250, 135-57]

RIN 2120-AC79

Air Carrier and Commercial Operator Training Programs

Correction

In rule document 95–30449 beginning on page 65940, in the issue of Wednesday, December 20, 1995, make the following correction:

§121.419 [Corrected]

On page 65949, in the first column, §121.419 (a) (1) (viii) was designated incorrectly the first time, and the paragraph should read ''(vii)''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8600]
RIN 1545-AE86

Definition of an S Corporation

Correction

In the correction to rule document 95–17914 corrected on page 49976 in the issue of Wednesday, September 27, 1995, make the following correction:

§ 1.1361-1 [Corrected]

In correction 4 to § 1.1361-1(k)(1), in the third line, ''*OSST*'' should read ''*QSST*''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Computer Matching Programs

Correction

In notice document 96–778 beginning on page 1817 in the issue of Tuesday, January 23, 1996, make the following correction:

On page 1817, in the third column, under **EFFECTIVE DATE:**, ''[Insert date 30 days after publication in the Federal Register].'' should read ''February 22, 1996.''

BILLING CODE 1505–01–D

Federal Register

Monday
January 29, 1996

Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1620

Thrift Savings Plan Participation for Certain Employees of the District of Columbia Financial Responsibility and Management Authority; Interim Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Thrift Savings Plan Participation for Certain Employees of the District of Columbia Financial Responsibility and Management Authority

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing interim regulations to implement section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Act). Under this Act, persons who separate from Federal employment and who are employed within two months by the District of Columbia Financial Responsibility and Management Authority may elect to participate in the Federal retirement system in which they last participated before separating from Federal service. These regulations address participation in the Thrift Savings Plan (TSP) by eligible employees who elect Federal retirement coverage. They do not apply to eligibility to participate in retirement programs administered by the Office of Personnel Management (OPM).

DATES: This interim rule is effective January 29, 1996.Comments must be received on or before March 29, 1996.

ADDRESSES: Comments may be sent to: Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code.

The District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Act), Pub. L. 104–8, section 101, 109 Stat. 97, 100, established the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) as an entity within the Government of the District of Columbia. The Act provides that individuals who commence employment with the Authority within two months of separating from Federal service may elect to retain their participation in the ''retirement system in which the individual last participated before so separating * * *.'' *Id.*, section 102(e)(1)(A), 109 Stat. at 102. Although this language is not explicit with respect to the TSP, the Act contemplates TSP participation because the TSP is a component of the Federal Employees' Retirement System (FERS) and the Civil Service Retirement System (CSRS).

Section 1653.113 of these interim regulations provides that the Authority must notify an employee of his or her right to participate in the TSP at the time the employee is required to be notified of his or her right to elect Federal retirement coverage. Because the TSP is an important part of the Federal employee's total retirement package, an employee should be advised of eligibility for TSP participation in order to make an educated decision whether to elect Federal retirement coverage.

Section 1620.114 provides that some employees may be eligible to contribute to the TSP immediately upon employment with the Authority, while others would be eligible to participate in the TSP during subsequent TSP open seasons.

Section 1620.114(a) pertains to employees who leave Federal service and are employed by the Authority with a break in service of less than 31 full calendar days. These employees are treated as though they transferred from one Federal agency to another with no break in service. Therefore, if such an employee had a valid TSP contribution election in effect on the date the employee separated from the Federal service, the employee's contributions to the TSP will continue without interruption pursuant to the election that was in effect upon separation. If such an employee was eligible to participate in the TSP prior to separation but did not have a valid TSP election in effect on the date that he or she separated from the Federal service, the employee will be eligible to contribute to the TSP during the first open season beginning after the date he or she commences employment with the Authority. If such an employee was not previously eligible to participate in the TSP, the employee will become eligible during the second open season beginning after the date he or she began to work for the Federal Government, not with the Authority.

Section 1620.114(b) pertains to employees who were separated from Federal service for 31 or more full calendar days but less than 2 months before they were employed by the Authority. Section 1620.114(b)(1) provides that if such an employee was previously eligible to participate in the TSP, he or she will be eligible to contribute to the TSP during the first open season beginning after the date he or she is employed by the Authority. Section 1620.114(b)(2) provides that if the employee was not previously eligible to participate in the TSP, he or she will be eligible to contribute to the TSP during the second open season beginning after the date he or she is employed by the Authority.

Section 1620.114(b)(3) provides that if an employee covered under section 1620.114(b)(1) or (b)(2) commences employment with the Authority during an open season but before the election period (the last month of the open season), that open season is considered the employee's first open season.

These rules are applied in the following examples:

Example Number 1: Assume an employee leaves Federal service and 40 days later, on December 15, 1995 (which is during an open season), commences employment with the Authority. Assume also that the employee elects retirement coverage under CSRS. Assume further that the employee was eligible to contribute to the TSP at the time she separated from the Federal agency. Because she commenced employment with the Authority after 31 or more full calendar days, but within 2 months after separating from Federal service, section 1620.114(b) applies. Because she previously was eligible to contribute to the TSP, section 1620.114(b)(1) applies. Therefore, the employee is eligible to contribute to the TSP during the first open season beginning after the date the employee commenced employment with the Authority. Furthermore, because the employee was hired during a TSP open season, but not during the last month of an open season, section 1620.114(b)(3) provides that the open season during which she commences employment with the Authority is her first open season. Accordingly, the employee would be eligible to contribute to the TSP beginning in the first full pay period in January 1996. (Note that under section 1620.115(a), if the employee was covered by FERS, she would be entitled to Agency Automatic (1%) Contributions beginning in the first full pay period in January 1996, whether or not she elected to contribute to the TSP; and that she would be entitled to

matching contributions if she did elect to contribute.)

Example Number 2: Assume an employee begins working for the Federal Government on February 28, 1995, and is recruited by the Authority to begin working on October 30, 1995. Assume further that the employee separates from Federal service one week before commencing service with the Authority, and that he elects continued retirement coverage under FERS once he starts working for the Authority. Because he commenced employment with the Authority with less than a 31 day break in service, 1620.114(a) applies. Because he was not previously eligible to contribute to the TSP, section 1620.114(a)(3) applies and provides that he is eligible to contribute to the TSP during the second open season beginning after the date he first began working for the Federal Government. The employee's first open season was the May 15, 1995, to July 31, 1995, open season, during which he was employed by the Federal Government. His second open season is the November 15, 1995, to January 31, 1996, open season, during which he will be employed by the Authority. Therefore, the employee can contribute to the TSP in the first full pay period in January 1996. (Also note that under section 1620.115(a), because the employee is covered by FERS, he would be entitled to Agency Automatic (1%) Contributions beginning in the first full pay period in January 1996, whether or not he elected to contribute; and that he would be entitled to matching contributions if he did elect to contribute.)

Section 1620.117 provides that an employee of the Authority who elects Federal retirement coverage must notify the TSP recordkeeper that he or she has commenced employment with the Authority if the employee separated from Federal service with an outstanding TSP loan. It may be possible for such employees to continue their TSP loan payments and thereby avoid repaying in full or having a taxable distribution declared, if their loan payments resume before their loan accounts are closed.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only a small number of former Federal employees and a single agency of the Government of the District of Columbia.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Elections made under these regulations will affect qualifying employees' participation in the TSP retroactive to their entry on duty with the Authority. The intent of the legislation is to allow eligible employees to participate in the TSP as soon as practicable. A delay in the effective date of these regulations would be contrary to the intent of the legislation and to the public interest because it would delay the election opportunity for eligible employees during the initial staffing of the Authority.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1620

District of Columbia, Employment benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as set forth below:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 100–238, 101 Stat. 1744; Pub. L. 100–659, 102 Stat. 3910; Pub. L. 104–4, 109 Stat. 48.

2. Subpart I is added to part 1620 to read as follows:

Subpart I—Certain Employees of the District of Columbia Financial Responsibility and Management Assistance Authority.

Subpart I—Certain Employees of the District of Columbia Financial Responsibility and Management Assistance Authority

§ 1620.110 Scope.

The District of Columbia Financial Responsibility and Management Assistance Authority (Authority) was established by the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (the Act), Public Law 104–8, 109 Stat. 97. Although the Authority is an agency of the District of Columbia Government, any individual who is employed by the Authority within two months after being separated from Federal service may elect to retain his or her participation in the retirement system in which the individual last participated before separating from Federal service. This subpart governs participation in the Thrift Savings Plan (TSP) by employees of the Authority who elect to be covered by FERS or CSRS.

§ 1620.111 Definitions.

As used in this subpart:

Authority means the District of Columbia Financial Responsibility and Management Authority.

Basic pay means basic pay as defined in 5 U.S.C. 8431.

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, United States Code, or any equivalent Government retirement plan.

Election period means the last calendar month of an open season and is the period in which an election to make or change contributions during that open season can first become effective.

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, United States Code, and any equivalent retirement system.

Open season means the period during which employees may make an election with respect to their contributions to the Thrift Savings Plan.

Recordkeeper means the organization under contract to the Board to perform recordkeeping services. This currently is the National Finance Center, United States Department of Agriculture, P.O. Box 61500, New Orleans, Louisiana 70161- 1500.

Retirement election means an election by an eligible employee of the Authority to remain covered by either CSRS or FERS.

Thrift Savings Plan (TSP) election means a request by an eligible employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period (including a request to terminate contributions), or to change the allocation of TSP contributions among the TSP investment funds, as described at 5 CFR 1600.4. A TSP election must be made on Form TSP–1, Thrift Savings Plan Election Form.

§ 1620.112 Eligibility requirements.

To be eligible to participate in the TSP, an employee of the Authority must:

(a) Have been separated from the Federal service for not more than 2 months before commencing employment with the Authority;

(b) Have been covered by FERS or CSRS immediately before separating from Federal service; and

(c) Have elected to be covered by FERS or CSRS within the time permitted by the United States Office of Personnel Management.

§ 1620.113 Notice to an employee of his or her right to participate in the TSP.

The Authority must notify an employee of his or her right to participate in the TSP at the time the employee is required to be notified of his or her right to elect to be covered under FERS or CSRS.

§ 1620.114 Employee contributions.

(a) An employee of the Authority who is separated from Federal service for less than 31 full calendar days before commencing employment with the Authority and who elects to be covered by FERS or CSRS within the time period mandated by the United States Office of Personnel Management will be eligible to contribute to the TSP as though he or she had transferred to the Authority from the losing Federal agency, i.e., as though the employee did not have a break in service as defined by the TSP.

(b) An employee who is employed by the Authority after 31 or more full calendar days but within 2 months after separating from Federal service and who elects to be covered by FERS or CSRS within the time period permitted by the United States Office of Personnel Management will be eligible to contribute to the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the first open season (as determined in accordance with paragraph (b)(3) of this section) beginning after the date the employee commences employment with the Authority.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second open season (as determined in accordance with paragraph (b)(3) of this section) beginning after the date the employee commences employment with the Authority.

(3) If an employee of the Authority who is described in paragraphs (b)(1) and (b)(2) of this section is employed by the Authority during an open season, but before the election period (the last calendar month of the open season), the open season during which the employee is employed will be considered the employee's first open season.

(c) TSP contributions from employees of the Authority must be made from the employee's basic pay for service with the Authority and are subject to the limits described at 5 CFR Part 1600, subpart C.

§ 1620.115 Employer contributions.

(a) If an eligible employee of the Authority elects to be covered by FERS, the Authority must contribute on the employee's behalf each pay period to the Thrift Savings Fund, in accordance with Board procedures, an amount equal to 1 percent of the employee's basic pay paid to such employee for that period of service, as required by 5 U.S.C. 8432(c)(1)(A), beginning:

(1) Immediately upon employment with the Authority if the employee separated from Federal service less than 31 full calendar days before commencing employment with the Authority and was eligible to participate in the TSP when he or she separated from Federal service; or

(2) With the first pay period in which the employee is eligible to contribute to the TSP (as determined in accordance with § 1620.114 of this subpart) for all other FERS employees of the Authority.

(b) If a FERS employee of the Authority elects to participate in the TSP under § 1620.114 of this subpart, the Authority must contribute on behalf of such employee each pay period to the Thrift Savings Fund, in accordance with Board procedures, any matching contributions which he or she is eligible to receive under 5 U.S.C. 8432(c).

§ 1620.116 TSP contributions.

The Authority is responsible for transmitting, in accordance with Board procedures, any employee and employer contributions that are required by this subpart to the Board's Recordkeeper.

§ 1620.117 TSP loan payments.

The Authority shall deduct and transmit TSP loan payments for employees in accordance with 5 CFR part 1655 and Board procedures. An employee of the Authority who separates from Federal service with an outstanding TSP loan and who elects to be covered under FERS or CSRS must notify the recordkeeper that he or she has commenced employment with the Authority.

§ 1620.118 Failure to participate or delay in participation.

If an employee of the Authority who elects to be covered by FERS or CSRS fails to participate or is delayed in participating in the TSP because of a delay in the implementation of the Act or in the promulgation of the regulations in this subpart, the employee may request that retroactive corrective action be taken in accordance with 5 CFR 1605.2(b)(2), as if the delay were attributable to employing agency error. Lost earnings shall be payable pursuant to 5 CFR part 1606 due to delay described in this section, as if the delay were attributable to employing agency error.

§ 1620.119 Other regulations.

The Authority and individuals covered by § 1620.110 of this subpart are governed by the regulations in 5 CFR chapter VI, to the extent the regulations in 5 CFR chapter VI are not inconsistent with this subpart.

[FR Doc. 96–1492 Filed 1–26–96; 8:45 am]

BILLING CODE 6760–01–P

Federal Register

Monday
January 29, 1996

Part III

Office of Management and Budget

Order Providing for the Confidentiality of Statistical Information; Notice

OFFICE OF MANAGEMENT AND BUDGET

Order Providing for the Confidentiality of Statistical Information

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed order.

SUMMARY: The proposed order is intended to clarify, and make consistent, government policy protecting the privacy and confidentiality interests of individuals or organizations who furnish data for Federal statistical programs. It is intended to assure respondents who supply statistical information needed to develop or evaluate Federal policy that their responses will be held in confidence and would not be used against them in any government action. In effect, it clarifies and amplifies the privileged status afforded ''confidential statistical data'' about businesses and organizations as set forth in the Trade Secrets Act, 18 U.S.C. 1905, as well as the principles of the Privacy Act, 5 U.S.C. 552a, concerning information about individuals. It establishes policies to assure ''fair information practices'' (as advocated by the Privacy Protection Study Commission and the Commission on Federal Paperwork) for respondents and subjects of statistical inquiries, based on the concept of ''functional separation'' developed by the Privacy Protection Study Commission. The proposed order permits functional separation to be achieved by two means—1) identifying an agency or unit that is purely statistical, or 2) distinguishing statistical from nonstatistical functions within a single agency or unit.

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

ADDRESSES: Please address all written comments to Katherine K. Wallman, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Comments may be submitted via facsimile to 202/395–7245. Electronic mail comments may be submitted via SMTP to Wallman__K@a1.eop.gov or via X.400 to G=Katherine, S=Wallman, PRMD=gov+eop, ADMD+telemail, C=us. Comments submitted via electronic mail should include the commenter's name, affiliation, postal address, and email address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Jerry L. Coffey, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Inquiries may be submitted via facsimile to 202/395–7245. Electronic mail inquiries may be submitted via SMTP to Coffey__J@a1.eop.gov or via X.400 to G=Jerry, S=Coffey, PRMD=gov+eop, ADMD+telemail, C=us. Electronic mail inquiries should include the commenter's name, affiliation, postal address, and email address in the text of the message.

SUPPLEMENTARY INFORMATION:

A. Background

Statistical policy authority within the executive branch was established explicitly in section 103 of the Budget and Accounting Procedures Act of 1950, which stated, in its original language—

> The President, through the Director of the Bureau of the Budget, is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government. Such regulations and orders shall be adhered to by such agencies.

64 Stat. 834 (codified at 31 U.S.C. 18b). In 1982, this provision was recodified, without substantive change, at 31 U.S.C. 1104(d):

> The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication, and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

See also Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825) and Executive Order No. 10253 (31 U.S.C. 1104 note, and Codification of Presidential Proclamations and Executive Orders (1945–89), p. 687). Previous orders issued pursuant to this authority have been in the form of OMB Circulars, Transmittals and attached Exhibits (prior to 1977), Statistical Policy Directives (1978–1980), and Statistical Standards (since 1980).

The Paperwork Reduction Act of 1980 (as amended in 1986 and 1995) also requires OIRA to develop policies, principles, standards, and guidelines for privacy and confidentiality generally; the integrity of confidentiality pledges; and the confidentiality of information collected for statistical purposes (subsections 3504(e)(1), 3504(e)(5), and 3504(g)(1) of title 44). In addition the Act tasks OIRA to oversee agency compliance with related requirements of the Act and with the policies referenced above (subsections 3506(b)(1)(C), 3506(e) (2)–(4), and 3506(g)(1)).

The decentralized Federal statistical system consists of more than seventy agencies and units, including a dozen agencies that have statistical activities as their principal function. While this decentralized structure provides substantial benefits in making statistical units responsive to specific program needs, public confidence in nondisclosure pledges made by statistical agencies or units is sometimes affected by perceptions of the programs those statistics support.

By establishing a uniform policy for the principal statistical agencies, this order will reduce public confusion, uncertainty, and concern about the treatment of confidential statistical information by different agencies. By establishing consistent rational principles and processes to buttress confidentiality pledges, the order will eliminate unsupportable confidentiality claims and agency decision processes that have created uncertainties. Such consistent protection of confidential statistical information will, in turn, reduce the perceived risks of more efficient working relationships among statistical agencies, relationships that can reduce both the cost and reporting burden imposed by statistical programs.

B. Proposed Section 1

This section provides definitions for purposes of this order. Most of these definitions are self-explanatory.

One of the central definitions is ''statistical agency or unit,'' which refers to the class of organizations that are principally subject to the order. As noted above, the statistical policy authority in 31 U.S.C. 1104(d) is defined in terms of an enumerated set of statistical activities performed by any executive agency for any purpose. The definition of ''statistical agency or unit'' narrows the coverage of this order, except where otherwise specified, to agencies where statistical activities are predominant. For clarity, OMB has listed in Appendix A specific statistical agencies or units that have been initially determined to be subject to this order. OMB may revise this list from time to time.

Another central definition in Section 1 is ''statistical purpose'', which definition also includes examples of other (non-statistical) purposes. These terms are used in Sections 2 and 3 of the order. Many governmental and private sector activities use statistical information in summary, aggregate, or other anonymous forms. Most of them, however, also use information in identifiable form for making decisions about entities that are the subjects of that information. The definition of ''statistical purpose'' distinguishes Federal activities that produce statistical

information in anonymous form from all other Federal activities.

The definition of ''identifiable form'' is based on the standard in 26 U.S.C. 6103(b)(2) (defining tax return information as not including ''data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer'') and 26 U.S.C. 6103(j)(4) (regarding ''statistical use'' of ''anonymous'' return information), as well as on privacy principles applied by courts in cases under the Freedom of Information Act, see, e.g., *Carter* v. *Commerce*, 830 F.2d 388, 390–92 (D.C. Cir. 1987); *Marzen* v. *HHS*, 825 F.2d 1148, 1152 (7th Cir. 1987); *Alirez* v. *NLRB*, 676 F.2d 423, 427–28 (10th Cir. 1982). Statistical projects have as their objective the publication of estimates (with measurable error) of summary information or aggregate characteristics of some target population (which may be people or things). Such objectives do not require the disclosure of information that can be associated directly or indirectly with the identity of individuals, or their specific organizations or activities, that are the subject of the information. When the underlying information is collected under a pledge of confidentiality, statistical agencies and units apply a variety of techniques to assure that the published information cannot be ''mined'' for the component details about individual participants.

C. Proposed Section 2

This section states a general prohibition against the disclosure, or use, in identifiable form of information collected for exclusively statistical purposes, and the policy applies only to such information. It is intended to implement, in its simplest form, the organizational concept of functional separation—where an agency has a clear mandate to collect information for exclusively statistical purposes—and to establish the specific obligation that is communicated by a confidentiality pledge. The policy is stated in terms of ''disclosure''—it is not intended to prevent access to information by the respondents who provided the information or their agents (including heirs or successors) explicitly defined by law, nor is it intended to cast a veil of secrecy over information that is already in the public domain. The requirement to provide notice to respondents is consistent with the general requirement of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(e)(2)) and must also be consistent with the guidelines in Appendix B.

D. Proposed Section 3

This exception language applies only to agencies that are subject to the general policy in section 2 and only in the case where they also have ''authority'' to collect data to be used in identifiable form for nonstatistical purposes. The notice requirements are referenced to the paperwork review process.

The procedure called for by this section provides an additional means to implement functional separation and a means for the public and OMB to review data collections conducted by a statistical agency that are to be used for nonstatistical purposes. Its purpose is to identify all nonstatistical data collections carried out by statistical agencies (including collections carried out for other agencies) and to assure that proper notice to respondents is provided.

E. Proposed Section 4

This section states that the provisions of the order are to be applied to the maximum extent legally permissible. Thus section 4 requires that statutes (including, but not limited to, statutes regarding the collection, use, disclosure, and confidentiality of information) be construed to give the maximum force to confidentiality pledges that is legally permissible. For example, this requirement affects the interpretation of the Trade Secrets Act, where it strengthens the prohibition of disclosures of ''confidential statistical data''.

F. Proposed Section 5

Section 5 establishes a procedure for identifying and resolving any potential conflicts with this order. The procedure requires an agency review of all pertinent issues, a report and subsequent review by OMB, and, if necessary, appropriate review by the Department of Justice.

G. Proposed Section 6

Section 6 requires covered agencies to take all steps necessary to comply with this order. In most cases, such steps will include revision of formal and informal agency policies that can be made consistent with this order without statutory amendment. OMB and affected agencies will also consider seeking changes in statutes if necessary.

H. Proposed Section 7

Section 7 states that the act of providing data to a statistical agency or unit does not alter obligations under any other statute, including the Privacy Act and the Freedom of Information Act, for the same or similar information that is retained.

I. Proposed Section 8

Section 8 emphasizes that this order is intended to supplement, and not to restrict or diminish, any confidentiality protections that otherwise apply to statistical information. Examples of such protections include data encryption and other security measures as well as disclosure avoidance procedures used in statistical publications.

J. Proposed Section 9

Section 9 commits the Office of Information and Regulatory Affairs to provide guidance for implementing this order. OIRA will take steps to assure consistent policies in the rules adopted by affected agencies, and otherwise consult with agencies to assure the full and prompt implementation of this order. Any agency may also request OIRA to interpret any aspect of this order or to provide advice on any action proposed to give full effect to the policies of this order. OMB will also review the accuracy and adequacy of confidentiality pledges as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(e)(5), 3506(e)(2)–(4), 3506(g)(1) and 5 C.F.R. 1320.5(d)(2)(vii)–(viii)).

K. Proposed Section 10

This section establishes the effective date of the order.

L. Proposed Appendix A

Appendix A contains the list of ''statistical agencies and units'' determined by OMB to be principally subject to this order. Comment is particularly solicited on the list of agencies proposed for inclusion or on other agencies or units that should be considered for inclusion.

M. Proposed Appendix B

Appendix B provides guidelines for including comparable language in confidentiality pledges that cover data collected for exclusively statistical purposes. This is intended to provide the public with a clear notice when the uniform policies of this order are in effect. It is also anticipated that OMB clearance review will be used to eliminate similar and potentially confusing pledge language in cases where the standards of this order are not

met. See 5 C.F.R. 1320.5(d)(vii)–(viii) (60 FR 44988; August 29, 1995).

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Order Providing for the Confidentiality of Statistical Information

Consistent government policy protecting the privacy and confidentiality interests of persons who provide information for Federal statistical programs serves both the interests of the public and the needs of the government and society. The integrity and credibility of confidentiality pledges provides assurance to the public that information about persons or provided by persons for exclusively statistical purposes will be held in confidence and will not be used against them in any government action. Public confidence and willingness to cooperate in statistical programs substantially affects both the accuracy and completeness of statistical information and the efficiency of statistical programs. Fair information practices and functional separation of purely statistical activities from other government activities are both essential to continued public cooperation in statistical programs.

Therefore, pursuant to 31 U.S.C. 1104(d), section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), and Executive Order 10253 (as amended), and in order to improve the compilation, analysis, publication, dissemination, and confidentiality of statistical information, it is hereby ordered as follows:

Section 1. Definitions. For the purposes of this order:

(a) *Disclose* means to release information to anyone other than the respondent who provided, or is the subject of, such information (or the agent of such respondent);

(b) *Executive agency* is defined as in 31 U.S.C. 102;

(c) *Identifiable form* means any representation of information that permits information concerning a specific respondent to be reasonably inferred by either direct or indirect means;

(d) *Information* means information of any kind that is not generally available to the public, and includes data;

(e) *Person* means individuals, organized groups of individuals, societies, associations, firms, partnerships, business trusts, legal representatives, companies, joint stock companies, and corporations, and refers to both the singular and the plural;

(f) *Respondent* means a person who is requested to provide information, or is the subject of that information, or who provides that information;

(g) *Rule* means the whole or part of a statement by an Executive agency of general or particular applicability and future effect, and includes regulations, directives, orders, guidance, and policy statements;

(h) *Statistical agency or unit* means an agency or organizational unit of the Executive Branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes (Appendix A contains a list of ''statistical agencies or units'' as defined herein, which have been determined by the Office of Management and Budget to be subject to this order);

(i) *Statistical purpose* means the description, estimation, or analysis by the Federal Government of information concerning persons, the economy, society, or the natural environment (or relevant groups or components thereof) without regard to the identities of specific persons, as well as the development, implementation, or maintenance of methods, procedures, or information resources that support such purposes; ''statistical purpose'' specifically excludes many other activities or functions for which information is used in identifiable form, such as determining whether a person is eligible for a license, privilege, right, grant, or benefit (including whether such should be revoked) or whether a person's conduct was or is in accordance with law (including whether a fine, other punishment, monetary damages, or equitable relief should be imposed);

(j) *Use* of information means use by a statistical agency or unit, by officers or employees of that agency or unit, or by other agents (including contractors) acting as employees under the supervision and control of that agency or unit.

Section 2. Prohibitions regarding the disclosure and use of information collected for exclusively statistical purposes.

(a) Information acquired by a statistical agency or unit for exclusively statistical purposes may be used only for statistical purposes, and shall not be disclosed, or used, in identifiable form for any other purpose unless otherwise compelled by law.

(b) When a statistical agency or unit is collecting information for exclusively statistical purposes, it shall, at the time of collection, inform the respondents from whom the information is collected that such information may be used only for statistical purposes and may not be disclosed, or used, in identifiable form for any other purpose, unless otherwise compelled by law. If the statistical agency or unit has determined that it is not otherwise compelled by law, the confidentiality pledge shall be in the form as set forth in Appendix B.

Section 3. Prohibition on collecting information to be disclosed, or used, in identifiable form for non-statistical purposes.

(a) Unless a statistical agency or unit is specifically authorized by statute to acquire information to be disclosed, or used, in identifiable form for purposes other than statistical purposes, such agency or unit shall not collect information for any such (non-statistical) purposes.

(b) If a statistical agency or unit is specifically authorized by statute to acquire information to be disclosed, or used, in identifiable form for non-statistical purposes, and is collecting information for such non-statistical purposes, such agency or unit shall clearly identify such non-statistical purposes in both the Federal Register notices and submissions to Office of Management and Budget required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). In such cases when information is collected to be disclosed, or used, in identifiable form for purposes other than statistical purposes, a statistical agency or unit may not make a confidentiality pledge that includes any language that might reasonably be confused with the language contained in confidentiality pledges for information that is collected for exclusively statistical purposes (see Section 2(b) and Appendix B). Information collected to be disclosed, or used, in identifiable form for non-statistical purposes may be disclosed, or used, only for those non-statistical purposes approved under the Paperwork Reduction Act.

Section 4. The provisions of this order shall be applied to the maximum extent legally permissible. Accordingly, with respect to matters involving statistical information and activities of statistical agencies or units, Executive agencies shall, to the maximum extent legally permissible, construe and apply pertinent statutes (including, but not limited to, statutes regarding the collection, use, disclosure, and confidentiality of information) in a manner that enables full compliance with this order (or, where a statute precludes full compliance, in a manner that enables compliance with this order to the maximum extent not precluded by statute).

Section 5. Each statistical agency or unit subject to this order shall conduct a review of its activities to ensure that they are in full compliance with this order (or, if full compliance is precluded by statute, that they comply to the maximum extent not precluded by statute). The agency or unit shall complete the review no later than 60 days after this order takes effect for that agency or unit. The review shall include, among other things:

(a) an identification of any statutes that, the agency or unit believes, preclude full compliance with this order,

(b) an identification of any rules that, the agency or unit believes, are inconsistent with any provisions of this order (including an identification of which such rules are compelled by statute and, conversely, which ones may be revised without a statutory amendment), and

(c) the development of a plan for ensuring that the activities of the agency or unit fully comply with this order (or, if full compliance is precluded by statute, that such activities comply with this order to the maximum extent not precluded by statute).

The results of this review shall be submitted in a report to the Administrator of the Office of Information and Regulatory Affairs no later than 90 days after this order takes effect for that agency or unit. The Office of Management and Budget shall review such reports and, after consultation with the statistical agencies or units in question, may request that the Department of Justice review and provide its opinion regarding any statutes identified as precluding full compliance with this order, or any rules that have been identified as being inconsistent with any provisions of this order and as being compelled by statute.

Section 6. Statistical agencies or units shall implement this order through issuance of appropriate rules, in accordance with applicable procedures. To the extent that it is determined that there are any existing rules which are inconsistent with any provisions of this order and which an Executive agency may revise to be consistent (without statutory amendment), such Executive agency shall promptly undertake to revise such rules, in accordance with applicable procedures, so that they are consistent. OMB and affected statistical agencies or units shall consider, in accordance with the legislative clearance process under OMB Circular A–19, the appropriateness of any statutory amendments that would enable full compliance with this order.

Section 7. The disclosure of information to a statistical agency or unit shall in no way alter obligations under statutes, including the Freedom of Information Act and the Privacy Act, for the same or similar information that was retained.

Section 8. This order is intended to supplement, and not to restrict or diminish, any confidentiality protections that otherwise apply to statistical information.

Section 9. The Office of Information and Regulatory Affairs of the Office of Management and Budget will provide appropriate guidance regarding this order.

Section 10. This order is effective 30 days after final publication in the Federal Register.

Appendix A—Designated Statistical Agencies or Units

The following agencies or units have been determined by OMB to be ''statistical agencies or units'' for purposes of this order (this list may be revised from time to time):

Department of Agriculture—
- Economic Research Service
- National Agricultural Statistics Service

Department of Commerce—
- Bureau of the Census
- Bureau of Economic Analysis

Department of Education—
- National Center for Education Statistics

Department of Energy—
- Energy End Use and Integrated Statistics Division of the Energy Information Administration

Department of Health and Human Services—
- National Center for Health Statistics

Department of Justice—
- Bureau of Justice Statistics

Department of Labor—
- Bureau of Labor Statistics

Department of Transportation—
- Bureau of Transportation Statistics

Department of the Treasury—
- Statistics of Income Division of the Internal Revenue Service

National Science Foundation—
- Division of Science Resources Studies

Appendix B—Confidentiality Pledges

Statistical agencies or units subject to this order shall, whenever they collect information for exclusively statistical purposes and have determined that they may fully comply with the disclosure and use prohibitions in this order, incorporate the following or equivalent language into confidentiality pledges made to respondents:

> This information collection complies with the Federal Statistical Confidentiality Order. Therefore, by law, your responses may be used only for statistical purposes and may not be disclosed, or used, in identifiable form for any other purpose.

When a confidentiality pledge is made by a statistical agency or unit for any information collection that does not satisfy the disclosure and use standards of this order that apply to information collected for exclusively statistical purposes (e.g., when the purposes of the collection are not exclusively statistical), such pledge may not include any language that might reasonably be confused with the language specified above.

[FR Doc. 96–1525 Filed 1–26–96; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Monday
January 29, 1996

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of January 1, 1996, of three deferrals contained in one special message for FY 1996. This message was transmitted to Congress on October 19, 1995.

Rescissions

As of January 1, 1996, no rescission proposals were pending before the Congress.

Deferrals (Attachments A and B)

As of January 1, 1996, § 113.2 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1996.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995

Alice M. Rivlin,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	122.8
Routine Executive releases through January 1, 1996.... (OMB/Agency releases of $9.6 million, partially offset by cumulative positive adjustment of $4 thousand.)	-9.6
Overturned by the Congress.....	---
Currently before the Congress.....	113.2

[FR Doc. 96–1534 Filed 1–26–96; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT B
Status of FY 1996 Deferrals - As of January 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-96
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95	9,616			4	65,388
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					40,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					7,321
TOTAL, DEFERRALS		**122,807**	**0**		**9,616**			**4**	**113,194**

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Part V

The President

Presidential Determination No. 96–7 of December 27, 1995—Presidential Certification To Suspend Sanctions Imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro)

Presidential Determination No. 96–8 of January 4, 1996—Suspending Restrictions on U.S. Relations with the Palestine Liberation Organization

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–7 of December 27, 1995

Presidential Certification To Suspend Sanctions Imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro)

Memorandum for the Secretary of State, the Secretary of the Treasury [and] the Secretary of Transportation

Pursuant to the authority vested in me by section 1511(e)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) (the ''Act''), I hereby determine that the waiver or modification of the sanctions on Serbia and Montenegro that were imposed by or pursuant to the directives described in section 1511(a) (1–5) and (7–8) of the Act, in conformity with the provisions of United Nations Security Council Resolutions 1021 and 1022 of November 22, 1995, is necessary to achieve a negotiated settlement of the conflict in Bosnia-Herzegovina that is acceptable to the parties.

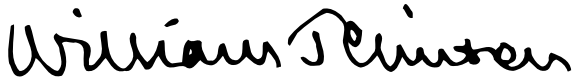
Therefore, I hereby direct the Secretary of the Treasury to take appropriate action to suspend the application of the sanctions imposed on Serbia and Montenegro pursuant to Executive Order No. 12808 of May 30, 1992, Executive Order No. 12810 of June 5, 1992, Executive Order No. 12831 of January 15, 1993, and Executive Order No. 12846 of April 25, 1993, effective upon the transmittal of this determination to the Congress. The property and interests in property previously blocked remain blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia.

I hereby direct the Secretary of Transportation to take appropriate action to suspend the application of the sanctions imposed pursuant to Department of Transportation Order 92–5–38 of May 20, 1992, Department of Transportation Order 92–6–27 of June 12, 1992, and Special Federal Aviation Regulation No. 66–2 of May 31, 1995 (14 C.F.R. Part 91, 60 Federal Register 28477), effective upon the transmittal of this determination to the Congress.

I hereby authorize the Secretary of State to take appropriate action to suspend the application of the sanctions imposed pursuant to Department of State Public Notice 1427 of July 11, 1991, at the appropriate time in conformity with the provisions of United Nations Security Council Resolution 1021 of November 22, 1995.

The national emergency declared in Executive Order No. 12808 and expanded in Executive Order No. 12934 shall continue in effect.

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



THE WHITE HOUSE,
Washington, December 27, 1995.

MEMORANDUM OF JUSTIFICATION FOR PRESIDENTIAL CERTIFICATION REGARDING THE MODIFICATION OF THE APPLICATION OF U.S. SANCTIONS ON SERBIA AND MONTENEGRO

The Serbia and Montenegro sanctions program is a key element of the President's policy aimed at bringing about a settlement of the conflict in the former Yugoslavia. The United States has continued to strive during the past three years to ensure strong enforcement of the sanctions on Serbia and Montenegro. This has maintained the effectiveness of the sanctions program, motivating the Serbian leadership to come to the negotiating table.

The General Framework Agreement for Peace in Bosnia and Herzegovina, signed in Paris on December 14, 1995, produced agreement among the warring parties to establish a single state of Bosnia-Herzegovina within its pre-1992 borders. Bosnia will be governed by a central government with constitutionally enumerated powers over internal and international affairs and will contain two entities. Along with resolution of many thorny territorial issues, the parties agreed to regional stabilization measures as well as to protect human rights and fundamental freedoms and to hold elections within the next year.

The agreement required more than two weeks of intensive negotiations in Dayton. During the talks, all sides were forced to make concessions on a range of deeply held issues. The likelihood of sanctions suspension was one of the key factors contributing to Serbian President Slobodan Milosevic's agreement at the talks. As the representative of Bosnian Serb interests at Dayton, Milosevic's role was crucial in reaching agreement. Sanctions relief was clearly anticipated as a consequence of accord, and has already taken the form of the United Nations Security Council Resolutions 1021 and 1022, adopted by the Council on November 22, 1995.

Before agreeing to sanctions suspension, we insisted on a credible reimposition mechanism to ensure no backsliding on the commitments made by the Serbs. If the IFOR commander or High Representative determines that the FRY or the Bosnian Serbs are not meeting their obligations under the Peace Agreement, economic sanctions may again go into effect against the Serbs. Accordingly, we plan to leave the Sanctions Assistance Mission infrastructure and monitors in place.

[FR Doc. 96–1823
Filed 1–26–96; 9:35 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–8 of January 4, 1996

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1994, part E of title V, Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, as amended, (''the Act''), I hereby:

(1) certify that it is in the national interest to suspend application of the following provisions of law until March 31, 1996:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

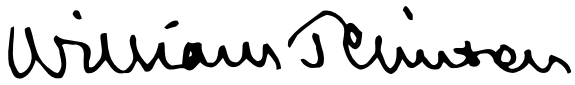
(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2502); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization continues to abide by the commitments described in section 583(b)(4) of the Act.

You are authorized and directed to transmit this determination to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, January 4, 1996.

[FR Doc. 96–1824
Filed 1–26–96; 9:36 am]
Billing code 4710–10–M

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FEDERAL REGISTER PAGES AND DATES, JANUARY

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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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Air pollution; standards of performance for new stationary sources:

Municipal waste combustors; published 12-19-95

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Common carrier services:

Foreign carriers or affiliates; participation in U.S. market in international facilities-based services; published 12-29-95

Organization, functions, and authority delegations:

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**. A cumulative list of Public Laws for the First Session of the 104th Congress will be published in Part I of the **Federal Register** on February 1, 1996.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

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