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WHO: Sponsored by the Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: 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)

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Reader Aids
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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
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DEPARTMENT OF AGRICULTURE

Food And Consumer Service

7 CFR PART 250

RIN 0584–AB99

Waiver Authority Under the State Processing Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule and waiver.

SUMMARY: This final rule amends the Food Distribution Program regulations by giving the Food and Consumer Service authority to waive provisions contained in the Food Distribution Program regulations for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. FCS is, at this time, invoking its authority under § 250.30(t) to waive certain provisions of § 250.30(f)(1)(i) in order to conduct a demonstration project.

EFFECTIVE DATE: This final rule is effective February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Ursula Key, Schools/Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 501, Alexandria, Virginia 22302; or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). The OMB control number assigned to the existing recordkeeping and reporting requirements was approved by OMB for Part 250 under control number 0584–0007. The current burden hours will not change as a result of this final rule.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurement by distributing and recipient agencies, this includes any administrative appeal procedures to the extent required by 7 CFR Parts 3015 or 3016.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service (FCS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The cost of compliance to State processors of donated foods is expected to be reduced by the changes proposed in this rule.

Background

Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts.

On April 13, 1995, the Department published a proposed rule in the Federal Register at 60 FR 18781 which would permit FCS to waive any of the requirements of the Food Distribution Program regulations at Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. The proposed rule provided a 30-day comment period. This final rule incorporates the proposed waiver provision in the State processing regulations at 7 CFR 250.30(t).

Analysis of Comments

The Department received a total of 9 comment letters from two distributing agencies, a local school food authority, and six commercial food processors. All commenters were in favor of the proposed rule.

Four commenters responded favorably to the rule as it was proposed. They stated that by allowing FCS to waive certain provisions, more processors would be attracted to the program, and the cost of processed end products should be reduced. They further stated that some of the provisions contained in the State processing regulations are overly restrictive and have resulted in processors dropping out of the State processing program. These commenters believed that over-regulation results in increased costs which are passed on to recipient agencies. They supported FCS's proposal to allow pilot projects which could provide guideposts for simplification of the regulations. One commenter believed that demonstration projects will fully support modifications to the current program to generate more competition and improved efficiency.

Five commenters who also supported the proposed rule cited specific provisions they would like to see waived as soon as possible. Three commenters supported the removal of the Agricultural Marketing Service acceptance service grading requirement for processing meat and poultry, complaining of excessive costs for obtaining the services of AMS graders. However, one commenter favored

retaining the requirement. Four commenters supported removing the requirement for processors to submit annual certified public accountant audit reports, also due to the costs involved. The commenters claimed that the requirement has forced some processors out of the program. They stated that those companies complying with the audit provision are passing on audit costs in prices of end products to schools. FCS appreciates these comments and will take them into consideration when determining which requirements will be waived during the demonstration projects.

Waiver of Requirements

FCS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) of the substitution of poultry. In a notice published elsewhere in this issue, FCS is announcing a demonstration project under which it will permit selected poultry processors to substitute commercial chicken for donated chicken in the State processing of donated chicken.

Summary

Based on the comments received, this final rule adopts § 250.30(t) of the proposed rule without change.

List of Subjects in 7 CFR Part 250

Agricultural commodities, Food assistance programs, Food processing.

For reasons set forth in the preamble, 7 CFR Part 250 is amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In Section 250.30, a new paragraph (t) is added to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(t) *Waiver authority.* The Food and Consumer Service may waive any of the requirements contained in this part for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Dated: January 18, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

Appendix to Preamble of Final Rule—Regulatory Impact Analysis

Date: June 1995
Agency: USDA, FCS
Contact: Ursula Key
Phone: (703) 305–2644

1. *Title:* Food Distribution Program—Waiver Authority Under the State Processing Program.

2. *Action:*

a. *Nature:* Final Rule.

b. *Need and Purpose:* This action is discretionary and is taken to support the goal of regulatory relief, increased State flexibility, increased program efficiency, and paperwork reduction. This authority will be used to conduct demonstration projects to test program alternatives to determine whether changes or greater flexibility will improve the efficiency of the State processing program. Of particular interest are changes that would increase competition among processors, which should result in lower costs to recipient agencies.

This action amends the Food Distribution Program regulations by giving the Food and Consumer Service authority to waive provisions pertaining to State processing of donated commodities in the Food Distribution Program regulations at 7 CFR Part 250.30 only for the purpose of allowing demonstration projects. Current State processing regulations may be overly restrictive, thus increasing processor costs and discouraging the participation of processors.

3. *Background:* Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. This activity is typically referred to as State processing.

State processing is an activity principally of the Child Nutrition Programs by which State or substate agencies arrange to have USDA donated commodities further processed into end products more readily usable by schools. For example, fresh bulk pack chicken might be processed into chicken nuggets, coarse ground beef into hamburger patties, whole turkeys into fully cooked breast meat and turkey ham, etc. About a third to half of all USDA donated meat and poultry is further processed under State processing contracts. For State processing, USDA either sends the commodities directly to a processor contracted by the State, or sends them to a State distributing agency, which in turn arranges to have the product backhauled to a processor. In either case, under State processing, State or recipient agencies pay the cost of any additional processing directly to the processor.

The total value of USDA commodities donated to the Child Nutrition Programs was $667 million in FY 1994. A little under half of this, of which a third, or $100 million worth, was further processed under State processing arrangements. This figure has been constant for the last several years. While the degree of State processing varies by the specific type of product donated by USDA, typically about two thirds of beef is processed under State contracts, while less than a third of the pork, chicken and turkey are processed. Under current FCS regulations, processors may substitute like kind commercial commodities for USDA commodities for their convenience in manufacturing, except the rules specifically prohibit the substitution of meat and poultry.

On April 13, 1995, the Department published a proposed rule in the Federal Register at 60 FR 18781 which would permit FCS to waive provisions relative to the State processing of donated commodities that are contained in the Food Distribution Program regulations at Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods. The proposed rule provided a 30-day comment period. This final rule incorporates the proposed waiver provision in the State processing regulations at 7 CFR 250.30(t).

The Department received a total of 9 comment letters, all of which were in favor of the proposed rule.

Commenters stated that by allowing FCS to waive certain provisions of the State processing regulations, more processors would be attracted to the program, and the cost of processed end products should be reduced. They further stated that some of the provisions contained in the State processing regulations are overly restrictive and have resulted in processors dropping out of the State processing program. These commenters believed that over-regulation results in increased costs which are passed on to recipient agencies. They supported FCS's proposal to conduct demonstration projects which could provide guideposts for simplification of the regulations. One commenter believed that demonstration projects will fully support modifications to the current program requirements to generate more competition and improve efficiency.

One of the first demonstrations being considered is the substitution of commercially acquired chicken for USDA donated chicken. Currently, only four poultry processors are participating in the State processing of donated foods. Processors have stated that the current policy which prohibits the substitution of commercially acquired chicken for donated chicken reduces the quantity of donated chicken they are able to accept and process during a given period. The prohibition against the substitution came about as a result of program abuses by processors in the past (e.g., substituting lesser grade commercial chicken for donated chicken, substituting mechanically boned chicken meat for high quality breast meat, etc). In FY 1994, USDA donated approximately $68 million worth of chicken to the Child Nutrition Program, about a third of which underwent State processing. Chicken purchased by USDA for further processing is typically bulk chill packed. In

FY 1994, USDA donated 9.5 million pounds valued at $5.3 million. Processors must schedule production around deliveries of the donated chicken since it is a very highly perishable product. Some of the processors must schedule production around deliveries of donated chicken for up to 30 individual States. Vendors do not always deliver donated chicken to the processors as scheduled, causing delays in production of end products. These delays may be eliminated if the processors can substitute commercial chicken for donated chicken. Any substituted commercial chicken must be at least as high in quality as USDA chicken in terms of grade, condition, and other attributes.

The demonstration project will enable FCS to evaluate whether to amend program regulations to provide for the substitution of donated chicken with commercial chicken in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would be likely to increase the number of processors participating, and whether it would probably increase the quantity of donated chicken that each processor accepts for processing. Also, FCS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated chicken accepted for processing in fact enable processors to function more efficiently, producing a greater variety of processed chicken end products in a more timely manner at lower costs. Further, FCS must determine whether USDA and the States have the practical capability to ensure that substitutions are, in fact, for comparable or better quality product.

4. *Justification of Alternative:* This final rule would authorize the Department to conduct demonstration projects to study the effect of waiving certain expensive and burdensome requirements in the State processing program. For example, Agricultural Marketing Service (AMS) acceptance service grading certificates may be used in lieu of company generated production and quality control records. Through these demonstration projects, the Department hopes to determine if the cost of compliance for food manufacturers, as well as the record-keeping burden associated with the administration of the program, can be reduced. The Department's goal is to attract more manufacturers to participate in the State processing program. We are aware of three major poultry processors who sell commodity product to USDA but do not participate in the State processing program. We are not able to determine at this time exactly how many additional processors will decide to participate in the State processing program but AMS is optimistic that more processors will be interested in participating. This increased competition should ultimately lead to lower prices to recipient agencies. By conducting the demonstration projects, the Department can determine if relaxing certain requirements will adversely affect program accountability. It is important to note that all remaining controls and requirements of the State processing regulations and the State processing contracts will remain in effect. We are only considering reductions or waivers which are feasible because other program controls can perform the function of the changed or waived requirements. If the results of the demonstration projects indicate that certain requirements can be modified or waived without compromising program integrity, the Department can consider amending certain current State processing program requirements. The Department expects this rule will support efforts to streamline the administration of the State processing program and improve customer service to recipient agencies (primarily schools).

Two other alternatives were considered: (1) doing nothing and (2) eliminating the audit and substitution regulations entirely. The option of selected waivers for demonstration projects was the preferred alternative.

5. *Effects:*

a. *Effects on food manufacturers:* Through conducting demonstration projects, FCS can determine if it is possible to eliminate or reduce reporting and recordkeeping requirements for processors. Some of the more burdensome requirements include inventory records, production records, quality control records, sales records, monthly performance reports, grading and inspection requirements, performance, supply, and surety bonding requirements, and the certified public accountant audit requirement. For example, processors which receive donated food valued at $250,000 or more each year are required to submit an annual independent certified public accountant audit report. This requirement may be relaxed to require an audit every two or three years for those processors with a history of good performance. The Department is interested in determining whether any of the above requirements can be eliminated or reduced while still maintaining program accountability for the donated food. Also, the Department intends to determine how much costs can be reduced for processors as a result of participation in the demonstration projects. Since program controls may not be as strong as under current rules, FCS would seek to determine the extent to which the benefits of burden reduction are worth potential costs due to less control.

b. *Effects on State distributing agencies:* Through the demonstrations projects, the Department will determine if it is possible to streamline the administration of the processing program at the State level. Currently, States must enter into agreements or renew them annually. Additionally, States must review end product data schedules, performance, supply, and surety bonds, performance reports and grading certificates on a monthly basis, and certified public accountant audit reports as submitted. During the demonstration projects, the Department hopes to review the current responsibilities of the State agencies and determine areas where there is duplication of effort and where reductions in reporting may be possible.

c. *Effects on Recipient agencies:* Currently the processors' costs of all the record-keeping and reporting requirements (e.g., acceptance service grading, performance, supply, and surety bond, and certified public accountant audit reports) are being passed on to the recipient agencies via higher prices for end products. Also, fewer processors are participating in the program, claiming that certain requirements are too burdensome and expensive. FCS has been informed that the typical cost of an independent certified public accountant audit report can run from $10,000 to $25,000 depending on the volume of food processed by a manufacturer. If we could require the audits less frequently for processors with a history of good performance, their costs could be significantly reduced. Since processors pass their costs on to recipient agencies, this should enable them to reduce the prices of the products they sell to schools. By conducting demonstration projects to study the possibility of removing or reducing some of the requirements, the Department hopes that more processors will participate in the State processing program, thereby increasing the competitive base. By reducing costs for the processors and increasing competition, it should be possible to reduce prices of end products to the schools. Processing adds about $0.78 to $1.09 per pound to the value of the end product. For example, coarse ground beef costing USDA $1.08 per pound would be worth $1.86 to $2.17 per pound to the State after processing. In other words, processing roughly doubles the value of donated beef.

As with beef, processing typically adds about $0.78 to $1.09 per pound in value to chicken, roughly the same per pound as beef processing. It is hoped that the flexibilities offered through the demonstrations under this rule could reduce this by perhaps 5 to 10 percent. If the demonstrations prove these savings out, and the flexibilities had been available and fully used in 1994, States would have saved about $1 to $2 million of their processing costs (i.e., 25 million pounds times $0.93 per pound processing (the midpoint) equals $23 million minus 5 percent to 10 percent equals $1.2 to $2.3 million). If a comparable savings rate were achieved in all processed meat and poultry in 1994, the States would have saved perhaps $7 to $14 million total. The demonstration projects will allow FCS to quantify potential savings more accurately. See attached tables for more detailed illustration.

d. *Effects on program costs and integrity:* As demonstration projects are conducted, the Department hopes to determine if certain administrative costs associated with the State processing program can be reduced. The Department is also concerned that program integrity be maintained. If elimination of audit requirements or allowance of substitution should result in an increase in fraudulent behavior, the potential savings desirable could be completely eliminated.

e. *Effects on small entities:* This rule would not have a significant economic impact on a substantial number of small entities. Commercial food processors participating in the demonstration projects will be most affected to the extent that they have the greatest record-keeping and reporting requirements in the State processing program.

TABLE 1.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Child nutrition commodities:										
Entitlement	$520,845	$533,188	$558,154	$573,281	$574,598	952,311	1,009,384	842,193	887,012	894,648
Bonus	110,601	84,306	122,162	90,163	92,226	139,820	109,105	315,727	163,940	147,851
Total commodities	631,446	617,494	680,316	663,444	666,824	1,092,131	1,118,489	1,157,920	1,050,952	1,042,499
of which:										
Beef patties, frz	10,484	11,545	12,732	14,335	6,801	7,748	8,426	9,262	10,597	4,986
Beef patties, frz w/vpp	12,350	19,004	25,193	25,067	20,749	11,428	16,909	22,177	22,514	19,068
Beef patties, extra lean	.....	.....	6,810	10,736	8,931	.....	.....	3,830	6,771	5,563
Beef frozen ground	103,661	110,964	115,473	116,522	94,796	80,778	84,581	88,938	92,698	74,104
Beef roasts, choice	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Beef, canned W/J	942	.....	906	753	72	612	.....	612	504	47
Beef, frz grd course process	7,014	8,880	11,759	16,035	21,039	5,437	6,930	9,072	12,390	16,422
Subtotal, beef	134,451	150,393	172,873	183,448	152,388	106,003	116,846	133,891	145,474	120,190
Chicken, canned boned	.....	.....	.....	.....	2,103	.....	.....	.....	.....	1,083
Chickens, chilled bulk	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Chickens, chill leg	.....	.....	.....	4,807	5,377	.....	.....	.....	9,108	9,830
Chickens, drums	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chickens, frozen, cut up	36,732	32,187	33,257	19,869	20,536	55,506	53,946	60,454	31,737	31,753
Chickens, frozen breaded	3,235	.....	4,596	12,544	13,646	2,611	.....	3,988	11,424	12,762
Chickens, leg qtrs	.....	.....	.....	.....	1,133	.....	.....	.....	.....	3,080
Chickens, nuggets frz soc	.....	.....	241	4,183	1,370	.....	.....	468	2,652	2,028
Chickens, diced frz	.....	.....	22,107	12,074	18,066	.....	.....	9,921	5,271	8,133
Chickens, patties, soc	.....	.....	.....	121	474	.....	.....	.....	78	702
Chickens, thighs	.....	.....	.....	.....	1	.....	.....	.....	.....	.....
Subtotal, chicken	46,227	38,031	67,475	59,192	68,048	69,025	65,178	89,442	70,458	78,867
Pork, canned W/NJ	336	2,045	923	680	1,572	252	1,369	720	540	1,269
Pork, frz ground	17,481	23,833	15,349	20,217	15,794	16,252	20,744	16,947	19,744	15,579
Pork, frz grd coarse process	.....	.....	1,986	3,170	3,733	.....	.....	2,020	3,247	3,841
Pork, frz patties	.....	.....	.....	.....	291	.....	.....	.....	.....	277
Pork, ham, frz cooked	19,618	114	9,641	.....	25,513	12,915	72	6,652	.....	16,011
Subtotal, pork	37,435	25,992	27,899	24,067	46,903	29,419	22,185	26,339	23,531	36,977
Turkey roasts, frozen	26,122	26,769	18,637	34,166	27,634	18,747	20,071	13,221	24,874	19,962
Turkey, commercial pack	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Turkey, frozen ground	5,957	5,928	5,978	11,012	9,858	9,098	8,189	7,847	18,817	16,926
Turkey, frozen whole	11,700	12,191	7,551	7,612	9,364	17,352	17,754	10,949	12,406	15,043
Turkey, chilled, bulk	3,832	3,613	5,870	8,212	7,287	5,976	5,544	9,821	13,752	11,720
Turkey, frz ground burgers	.....	.....	809	3,166	1,648	.....	.....	756	3,348	1,872
Turkey, sausage chubbs	.....	.....	.....	.....	371	.....	.....	.....	.....	468
Turkey, sausage patties	.....	.....	.....	.....	606	.....	.....	.....	.....	540
Turkey, sausage links	.....	.....	.....	.....	409	.....	.....	.....	.....	320
Subtotal, turkey	47,611	48,501	38,845	64,168	57,177	51,173	51,558	42,594	73,197	66,851
Total, meat and poultry	265,724	262,917	307,092	330,875	324,516	255,620	255,767	292,266	312,660	302,885

TABLE 2.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Likely to be further processed by States:										
Beef, frozen ground	$103,661	$110,964	$115,473	$116,522	$94,796	80,778	84,581	88,938	92,698	74,104
Beef, frz grd coarse process	7,014	8,880	11,759	16,035	21,039	5,437	6,930	9,072	12,390	16,422
Subtotal, beef	110,675	119,844	127,232	132,557	115,835	86,215	91,511	98,010	105,088	90,526
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	84,189	.....	.....	.....	.....	90,526
Chicken, chilled bulk	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Subtotal, chicken	6,260	5,844	7,274	5,594	5,343	10,908	11,232	14,611	10,188	9,496
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	8,831	.....	.....	.....	.....	9,496
Pork, frz ground	17,481	23,833	15,349	20,217	15,794	16,252	20,744	16,947	19,744	15,579
Pork, frz grd course process	.....	.....	1,986	3,170	3,733	.....	.....	2,020	3,247	3,841
Subtotal, pork	17,481	23,833	17,335	23,387	19,527	16,252	20,744	18,967	22,991	19,420

TABLE 2.—CHILD NUTRITION PROGRAMS, COMMODITY DONATIONS—Continued

	Dollars in thousands					Pounds in thousands				
	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	18,061	.....	.....	.....	.....	19,420
Turkey, frozen ground	5,957	5,928	5,978	11,012	9,858	9,098	8,189	7,847	18,817	16,926
Turkey, chilled bulk	3,832	3,613	5,870	8,212	7,287	5,976	5,544	9,821	13,752	11,720
Subtotal, turkey	9,789	9,541	11,848	19,224	17,145	15,074	13,733	17,668	32,569	28,646
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	26,641	.....	.....	.....	.....	28,646
Total, meat and poultry	144,205	159,062	163,689	180,762	157,850	128,449	137,220	149,256	170,836	148,088
Additional processing costs at $0.93 per pound	.....	.....	.....	.....	137,722	.....	.....	.....	.....	148,088
Potential State processing savings at:										
1 percent	.....	.....	.....	.....	1,377	.....	.....	.....	.....	.....
5 percent	.....	.....	.....	.....	6,886	.....	.....	.....	.....	.....
10 percent	.....	.....	.....	.....	13,772	.....	.....	.....	.....	.....

Approved:
Dated: June 28, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

Dated: August 29, 1995.

Stephen B. Dewhurst,

Director, Office of Budget and Program Analysis.

Dated: August 4, 1995.

Keith Collins,

Acting Chief Economist.

Dated: September 11, 1995.

Ellen Haas,

Assistant Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 96–2177 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–162–AD; Amendment 39–9504; AD 96–03–07]

Airworthiness Directives; Beech Model 400, 400A, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400, 400A, and MU–300–10 airplanes, that requires installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. This amendment is prompted by reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. The actions specified by this AD are intended to prevent such shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

DATES: Effective March 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

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 certain Beech Model 400, 400A, and MU–300–10 airplanes was published in the Federal Register on May 25, 1995 (60 FR 27705). That action proposed to require installing an improved adjustment mechanism on the flightcrew seats, and replacing the existing aluminum seat reinforcement assemblies with steel assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter suggests that the corrective action for this proposed AD is much simpler than that specified in the proposal. The commenter perceives the problem to be that some pilots may not carefully check the security and locking of their seats after making an adjustment. Therefore, the seat can slide during taxi, climb out, or turning. The commenter believes the corrective action involves flightcrew awareness; the flightcrew should be responsible in determining if the seat is locked into position by attempting to make the seat slide out of position by rocking the seat fore and aft. The commenter suggests that, if this method were employed, the costs associated with the accomplishment of the actions specified in this proposed AD would not be necessary. The commenter agrees that if the seat locking pins are worn or the mechanism bent, those parts should be repaired.

The FAA does not concur with the commenter's suggestion that attempting to make the seat slide out of position by rocking the seat fore and aft sufficiently addresses the unsafe condition. In this case, the FAA has received several reports of incomplete latching of the existing adjustment mechanism, and cracking of the aluminum seat reinforcement assemblies. Cracking of the aluminum seat reinforcement assemblies is an indicator of a

structurally weak design, and this is the unsafe condition the FAA is addressing in this AD action. The FAA has the authority to issue an AD when it is found that an unsafe condition is likely to exist or develop on other products of the same type design. The FAA finds that installing an improved seat tracking adjustment mechanism and replacing the aluminum seat reinforcement assemblies with steel assemblies adequately, and appropriately, addresses this unsafe condition.

This same commenter also questions the FAA's original certification basis of the subject airplane relative to the seat mechanism. The commenter asks whether the FAA ''made a mistake'' by certifying the airplane with these seat mechanisms installed.

In response to this, the FAA points out that an airplane's type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has made the determination that they establish an appropriate level of safety. However, actual in-service experience (as well as other factors, such as manufacturers' fatigue testing, etc.) may reveal problems in an airplane or its components that were not envisioned or predictable at the time of its type certification. When these problems create an unsafe condition, this means that the original level of safety is no longer being achieved. When actions or procedures are identified that will positively correct the unsafe condition and restore the airplane to its original level of safety, an AD is the appropriate vehicle for mandating that such actions be accomplished.

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 169 Beech Model 400, 400A, and MU–300–10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $700 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $258,940, or $2,140 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, 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 the following new airworthiness directive:

96–03–07 Beech Aircraft Corporation: Amendment 39–9504. Docket 94–NM–162–AD.

Applicability: Model 400 airplanes, serial numbers RJ–1 through RJ–65 inclusive; Model 400A airplanes, serial numbers RK–1 through RK–93 inclusive; and Model MU–300–10 airplanes, serial numbers A1001SA through A1011SA inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 reduced controllability of the airplane due to a shifting of the flightcrew seat during flight, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, install an improved adjustment mechanism on the flightcrew seat, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Beechcraft Service Bulletin No. 2536, Revision 1, dated April 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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita 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) The installation and replacement shall be done in accordance with Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995. (NOTE: The issue date of Service Bulletin No. 2536 is indicated only on page 1; no other page of the document is dated.) 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 Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 13, 1996.

Issued in Renton, Washington, on January 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1521 Filed 2–9–96; 8:45am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–261–AD; Amendment 39–9475; AD 95–26–17]

Airworthiness Directives; de Havilland Model DHC–8–301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–301, –311, and –315 series airplanes. This action requires modification of the airspeed limitations placard and revision of the Airplane Flight Manual to specify operating at lower airspeeds at full flaps. This action also provides for the termination of the requirements of this AD for certain airplanes. This amendment is prompted by a report that incorrect rivets were installed on the outboard flaps assemblies of these airplanes. The actions specified in this AD are intended to prevent structural failure of the outboard flaps of the wings due to the installation of incorrect rivets in the flap assemblies, which could result in reduced controllability of the airplane.

DATES: Effective February 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 27, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–301, –311, and –315 series airplanes. Transport Canada Aviation advises that incorrect rivets were installed during manufacture of the outboard flap assemblies of these airplanes. Investigation revealed that AD rivets were installed on the outboard flaps instead of DD rivets. AD rivets are made of a material that is not as strong as that of DD rivets. This condition, if not corrected, could result in structural failure of the outboard flaps of the wings, and subsequent reduced controllability of the airplane.

The manufacturer has issued de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, which describes procedures for modification (8/2498) of the airspeed limitations placard to specify a lower airspeed at 35 degrees flaps.

The service bulletin also describes procedures for modification (8/2066) of the outboard flaps, which entails drilling out the AD rivets and installing new DD rivets on Model DHC–8–311 and –315 series airplanes. Following accomplishment of this modification, the service bulletin specifies removal of the airspeed limitations placard (Modification 8/2498). A corrective modification has not yet been developed for Model DHC–8–301 series airplanes.

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–95–05R1, dated October 19, 1995, in order to assure the continued airworthiness of these airplanes in Canada. In addition, the Canadian airworthiness directive requires a revision to the Airplane Flight Manual (AFM), which specifies operating at a lower airspeed at full flaps. The Canadian airworthiness directive references DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995, for accomplishment of the AFM revision for Model DHC–8–301 series airplanes.

These airplane models are manufactured in Canada and are 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, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent structural failure of the outboard flaps of the wings and subsequent reduced controllability of the airplane. This AD requires modification of the airspeed limitations placard to indicate that the airplane must be flown at reduced airspeed when flying at 35 degrees flaps. This action is required to be accomplished in accordance with the service bulletin described previously.

Additionally, this AD requires a revision to the AFM for all airplanes to include information relative to reducing airspeed at 35 degrees flaps. (The revision for Model DHC–8–301 series airplanes is described in DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995.)

For Model DHC–8–311 and –315 series airplanes, this AD also provides for termination of the requirements of the AD by modifying the outboard flaps (installation of Modification 8/2066).

This is considered to be interim action. The FAA is currently considering requiring the accomplishment of Modification 8/2066 on the applicable airplanes, which will constitute terminating action for the requirements of this AD action. However, the planned compliance time for accomplishment of this modification is sufficiently long so that prior notice and time for public comment will be practicable.

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 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–261–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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–26–17 De Havilland, Inc.: Amendment 39–9475. Docket 95–NM–261–AD.

Applicability: Model DHC–8–301, –311, and –315 series airplanes; as listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (e) 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 structural failure of the outboard flaps of the wings and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the modification of the airspeed limitation placards (Modification 8/2498) in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

(b) Prior to further flight following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing either paragraph (b)(1) or (b)(2) of this AD, as applicable; and operate the airplane in accordance with those limitations.

(1) For Model DHC–8–301 series airplanes: Include the information specified in DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995, which specifies a lower airspeed limitation at full flaps. This may be accomplished by inserting a copy of Flight Manual Revision 57 into the AFM.

(2) For Model DHC–8–311 and –315 series airplanes: Include the following statement in section 2, paragraph 2.4.1.2., of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''Flap extended speed (V_{FE}): Flaps 35 degrees 130 knots IAS''

(c) For Model DHC–8–311 and –315 series airplanes: Accomplishment of Modification 8/2066 in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, constitutes terminating action for the requirements of this AD. Following accomplishment of Modification 8/2066, the airspeed limitations placard (Modification 8/2498) required by paragraph (a) of this AD and the AFM limitation required by paragraph (b) of this AD may be removed.

(d) As of the effective date of this AD, Modification 8/2498 must be accomplished in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, prior to installation of any outboard flap assembly having a part number and serial number that is listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

Note 2: For Model DHC–8–311 and –315 series airplanes: Accomplishment of Modification 8/2066 in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

(g) The modifications shall be done in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995. The AFM revision may be done in accordance with DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995, for Model DHC–8–301 series airplanes. The incorporation by reference of these documents 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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 27, 1996.

Issued in Renton, Washington, on December 22, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–2951 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–17–AD; Amendment 39–9499; AD 96–03–03]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This action requires replacing the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, safety-wiring the power control cable to the lever attach point clevis, inspecting to assure that the power cable is securely attached to the power control cable bracket, and correcting any attachment problems. Reports of power control cable attaching hardware failure on two of the affected airplanes prompted this action. In one of these instances, the power control cable disconnected from the lever attach point clevis, resulting in engine shutdown. The actions specified by this AD are intended to prevent such power control cable disconnection, which could result in engine shutdown and subsequent loss of control of the airplane.

DATES: Effective March 15, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 15, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alma Ramirez-Hodge, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5147; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on July 19, 1995 (60 FR 37037). The action proposed to require replacing the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, safety-wiring the power control cable to the lever attach point clevis, inspecting to assure that the power cable is securely attached to the power control cable bracket, and correcting any attachment problems. Accomplishment of the proposed actions would be in accordance with Fairchild Service Bulletin (SB) 226–76–009; Fairchild SB 227–76–004; or Fairchild SB CC7–76–001, all Issued: January 6, 1995, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 779 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts would consist of common hardware and the cost would vary; however, for the purposes of this AD, a figure of $20 is used. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $202,540. This figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the required actions. Since parts are obtained locally, the FAA has no readily available means of determining how many owners/operators have incorporated the required actions.

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 copy of the final 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, 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:

96–03–03 Fairchild Aircraft: Amendment 39–9499; Docket No. 95–CE–17–AD.

Applicability: Models SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, SA227–AC, SA227–BC, SA227–CC, and SA227–DC airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the power control cable from disconnecting from the lever attach point clevis, which could result in engine shutdown and subsequent loss of control of the airplane, accomplish the following:

(a) Replace the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, safety-wire the power control cable to the lever attach clevis, inspect to assure that the power cable is securely attached to the power control cable bracket, and correct any attachment problems. Accomplish these actions in accordance with the following service bulletins, as applicable:

(1) Fairchild Service Bulletin (SB) 226–76–009, dated January 6, 1995;

(2) Fairchild SB 227–76–004, dated January 6, 1995; or

(3) Fairchild SB CC7–76–001, dated January 6, 1995.

(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, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) The replacement required by this AD shall be done in accordance with Fairchild Service Bulletin 226–76–009; Fairchild Service Bulletin 227–76–004; or Fairchild Service Bulletin CC7–76–001, all Issued: January 6, 1995, as applicable. 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 Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9499) becomes effective on March 15, 1996.

Issued in Kansas City, Missouri, on January 23, 1996.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1574 Filed 2–9–96;8:45am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–238–AD; Amendment 39–9503; AD 96–03–06]

Airworthiness Directives; Jetstream ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream ATP airplanes, that requires inspections to detect fatigue cracking and corrosion in the gussets of the rear passenger door and rear baggage door apertures, and replacement of the gussets, if necessary. This amendment is prompted by fatigue tests which indicated that fatigue cracking and corrosion can occur in these gussets. The actions specified by this AD are intended to prevent degradation of the structural integrity of the fuselage pressure vessel due to the problems associated with cracking and corrosion in the gussets of the rear passenger door and rear baggage door apertures.

DATES: Effective March 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2747; fax (206) 227–1149.

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 certain Jetstream ATP airplanes was published in the Federal Register on October 13, 1995 (60 FR 53312). That action proposed to require a one-time detailed visual inspection for fatigue cracking and corrosion in the gussets of the rear passenger door and the rear baggage door apertures. That action also proposed replacement of cracked gussets, and either replacement or repair of corroded gussets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required inspection 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 $4,800, or $480 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, 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 the following new airworthiness directive:

96–03–06 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Ltd.): Amendment 39–9503. Docket 94–NM–238–AD.

Applicability: Model ATP airplanes; having serial numbers 2002 through 2012 inclusive; and 2019 through 2022 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 degradation of the structural integrity of the fuselage pressure vessel due to the problems associated with cracking and corrosion in the gussets of the rear passenger door and rear baggage door apertures, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks and corrosion of the gussets of the rear passenger door aperture, in accordance with Jetstream Service Bulletin ATP–53–29, dated October 31, 1994.

(1) If any crack is found, prior to further flight, replace the gusset in accordance with the service bulletin.

(2) If any corrosion is found, prior to further flight, either replace the gusset in accordance with the service bulletin, or repair the gusset in accordance with the Structural Repair Manual, chapter 53–10–12.

(b) Prior to the accumulation of 15,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks and corrosion of the gussets of the rear baggage door aperture, in accordance with Jetstream Service Bulletin ATP–53–29, dated October 31, 1994.

(1) If any crack is found, prior to further flight, replace the gusset in accordance with the service bulletin.

(2) If any corrosion is found, prior to further flight, either replace the gusset in accordance with the service bulletin, or repair the gusset in accordance with the Structural Repair Manual, chapter 53–10–12.

(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 Jetstream Service Bulletin ATP–53–29, dated October 31, 1994. 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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 March 13, 1996.

Issued in Renton, Washington, on January 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1519 Filed 2–9–96; 8:45am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–39–AD; Amendment 39–9502; AD 96–03–05]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes and Model DC–10–30, DC–10–40, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes and Model DC–10–30, DC–10–40, and KC–10A (military) airplanes. For Model MD–11 series airplanes, the AD requires an inspection to determine the serial number of the forward trunnion bolts on the main landing gear (MLG), and rework or replacement of the bolts, if necessary. For Model DC–10–30, DC–10–40, and KC–10A (military) airplanes, the AD requires an inspection for evidence of missing chrome and for corrosion on the chrome surfaces, or verification that the forward trunnion bolts have been chrome plated in a specific manner; and rework or replacement of the bolts, if necessary. This amendment is prompted by reports of chrome flaking on the bearing surface of the trunnion bolts due to improper cleaning of the base material prior to chrome plating. The actions specified by this AD are intended to prevent premature failure of the trunnion bolts and subsequent collapse of the MLG as a result of severe corrosion on the bearing surface and in the mechanical fuse due to chrome flaking.

DATES: Effective March 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained

from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information 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; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; 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 certain McDonnell Douglas Model MD–11 series airplanes and Model DC–10–30, DC–10–40, and KC–10A (military) airplanes was published in the Federal Register on August 21, 1995 (60 FR 43417). For Model MD–11 series airplanes, that action proposed to require an inspection to determine the serial number of the forward trunnion bolts on the main landing gear (MLG), and rework or replacement of the bolts, if necessary. For Model DC–10–30, DC–10–40, and KC–10A (military) airplanes, that action proposed to require an inspection for evidence of missing chrome and for corrosion on the chrome surfaces, or verification that the forward trunnion bolts have been chrome plated in a specific manner; and rework or replacement of the bolts, if necessary.

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.

Three commenters request that the proposed rule be revised to specify that unmodified parts may not be installed as of 18 months after the effective date of the AD. [Paragraphs (b) and (d) of the proposed rule specify currently that unmodified parts may not be installed as of the effective date of the AD.] The commenters point out that, although these parts that are currently installed on an airplane would be allowed to continued in service for 18 months prior to modification, those same parts currently in stock as spares would not be permitted to be installed prior to modification, regardless of the cumulative time on the spare part or the circumstances under which an operator may need temporary use of unmodified spare parts. The commenters indicate that the availability of adequate numbers of replacement or modified parts is an issue in meeting the compliance date; in such cases, there is often a need to take low-time or zero-time spare parts and rotate them temporarily into installed positions so that the intent of the AD can be accomplished without disrupting service to the traveling and shipping public. Along this same line, one commenter asks whether the manufacturer has ensured that adequate quantities of the ARG7558 bolts are available for procurement in order to support ''on condition'' replacements necessary as a result of accomplishing the intent of the proposed rule. This commenter suggests that, if such bolts are not available, the FAA should delay implementation of the rule until an adequate stock exists.

The FAA concurs with the commenters' request. At the time the proposed rule was issued, the FAA had obtained information indicating that sufficient spare parts would be available to support a requirement that trunnion bolts not meeting the requirements of the AD not be installed on an airplane. However, since the issuance of the proposed rule, the manufacturer has advised the FAA that, due to delays in the manufacture of new trunnion bolts, only a limited number of replacement trunnion bolts would be available for use as spares at the time the AD becomes effective. The manufacturer has advised further that sufficient trunnion bolts will be available to support an 18-month compliance time. Accordingly, the FAA has removed paragraphs (b) and (d) from the final rule.

One commenter requests that installation of a trunnion bolt having part number ARG7558–507 be considered terminating action for the requirements of paragraph (c) of the proposed rule. The FAA concurs. Subsequent to the issuance of the proposed rule, the FAA determined that trunnion bolts having part numbers ARG7558–507 (for Model DC–10 series airplanes), ARG7558–509 (for Model MD–11 series airplanes), and ARG7008–511 (for Model MD–11 series airplanes) are superseding parts that have been manufactured using an improved process that eliminates the problem of severe corrosion on the bearing surface and mechanical fuse due to chrome flaking. These parts have been plated with nickel prior to being plated with chrome. In light of this information, the FAA has added new paragraphs (b) and (d) to this final rule to specify that installation of a trunnion bolt having part number ARG7558–507 on the MLG of Model DC–10 series airplanes, or part number ARG7558–509 or ARG7008–511 on the MLG of Model MD–11 series airplanes, constitutes terminating action for the requirements of this AD for that MLG.

One commenter asks if the FAA is considering including a provision in the AD to specify that visual inspections accomplished prior to the effective date of the final rule satisfy the requirement of paragraph (c) of the proposed AD. The FAA finds that no change to the final rule is necessary to provide such a provision. The AD contains a statement that reads, ''Compliance: Required as indicated, unless accomplished previously.'' That statement provides credit for actions accomplished in accordance with the requirements of the AD prior to the effective date of the final rule.

One commenter requests that the economic impact information that was presented in the preamble to the notice be revised to increase the number of estimated necessary work hours from 1 to 33.5. The commenter states that when defective bolts are found the time required to accomplish the action proposed by this AD is approximately 33.5 work hours. The FAA does not concur with the commenter's request. The economic impact information presented is limited only to the cost of actions actually required by the rule (e.g., the inspection of the trunnion bolts). It does not consider the costs of ''on condition'' actions, e.g., ''rework or replacement of the bolts, if necessary,'' since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Subsequent to issuance of the proposal, McDonnell Douglas issued DC–10 Service Bulletin DC10–32–239, Revision 2, dated January 8, 1996. This revision is essentially identical to Revision 1, which was cited in the proposal as the appropriate source of service information; Revision 2 differs only in that it clarifies certain work instructions. The FAA has revised the final rule to include Revision 2 of the service bulletin as an additional source of service information.

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 with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 414 Model MD–11 series airplanes and Model DC–10–30, DC–10–40, and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 196 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 $11,760, 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, 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 the following new airworthiness directive:

96–03–05 McDonnell Douglas: Amendment 39–9502. Docket 95–NM–39–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas MD–11 Service Bulletin 32–45, Revision 1, dated May 1, 1995; and Model DC–10–30, DC–10–40, and KC–10A (military) airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin DC10–32–239, Revision 1, dated June 6, 1995, and Revision 2, dated January 8, 1996; 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 (e) 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 premature failure of the trunnion bolts and subsequent collapse of the main landing gear (MLG), accomplish the following:

(a) For Model MD–11 series airplanes: Within 18 months after the effective date of this AD, perform a visual inspection to determine the serial number of the forward trunnion bolts, part number (P/N) ARG7558–503 or ARG7558–505, on the right and left MLG's, in accordance with McDonnell Douglas MD–11 Service Bulletin 32–45, Revision 1, dated May 1, 1995.

(1) If the serial number of the trunnion bolt is STR0217, STR0232, STR0237 through STR0242 inclusive, or STR0244 through STR0284 inclusive; or if the trunnion bolt has been chrome plated in accordance with the Component Maintenance Manual (CMM), Chapter 20–10–02, Revision 31, dated September 1, 1991, since original manufacture: No further action is required by this AD.

(2) For trunnion bolts other than those identified in paragraph (a)(1) of this AD: Prior to further flight, remove the chrome plating on the trunnion bolt, replace the plating, and reinstall the reworked trunnion bolt; or replace the trunnion bolt with a serviceable part; in accordance with McDonnell Douglas MD–11 Service Bulletin 32–45, Revision 1, dated May 1, 1995.

(b) For Model MD–11 series airplanes: Installation of a trunnion bolt having P/N ARG7558–509 or ARG7008–511 on the MLG constitutes terminating action for the requirements of this AD for that MLG.

(c) For Model DC–10–30, DC–10–40, and KC–10A (military) airplanes: Within 18 months after the effective date of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with McDonnell Douglas DC–10 Service Bulletin DC10–32–239, Revision 1, dated June 6, 1995, or Revision 2, dated January 8, 1996.

(1) For airplanes on which the forward trunnion bolts, P/N ARG7558–501, installed on the left and right MLG's, have accumulated 6,000 or more total flight hours or 2,000 or more total flight cycles as of the date of the inspection: Remove the bolts and perform a visual inspection for evidence of missing chrome and for corrosion on the chrome surfaces, in accordance with the service bulletin.

(i) If no evidence of missing chrome and no corrosion on the chrome surfaces are found, no further action is required by this AD.

(ii) If any evidence of missing chrome or any corrosion on the chrome surfaces is found, prior to further flight, accomplish either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this AD.

(A) Remove the chrome plating on the trunnion bolt in accordance with the service bulletin; replace the plating in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas Designated Engineering Representative (DER) who has been given a special delegation by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, to make such a finding; and reinstall the reworked bolt in accordance with the service bulletin. Or

(B) Replace the trunnion bolt with a serviceable part in accordance with the service bulletin.

(2) For airplanes other than those identified in paragraph (c)(1) of this AD: Verify whether the forward trunnion bolts, P/N ARG7558–501, installed on the left and right MLG's, have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding.

(i) If the bolts have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given

a special delegation by the Manager, Los Angeles ACO, to make such a finding: No further action is required by this AD.

(ii) If any bolt has not been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding: Prior to further flight, accomplish the requirements of either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this AD in accordance with the service bulletin.

(d) For Model DC–10–30, DC–10–40, and KC–10A (military) airplanes: Installation of a trunnion bolt having P/N ARG7558–507 on the MLG constitutes terminating action for the requirements of this AD for that MLG.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(g) The actions shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 32–45, Revision 1, dated May 1, 1995; McDonnell Douglas DC–10 Service Bulletin DC10–32–239, Revision 1, dated June 6, 1995; and McDonnell Douglas DC–10 Service Bulletin DC10–32–239, Revision 2, dated January 8, 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 13, 1996.

Issued in Renton, Washington, on January 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1518 Filed 2–9–96;8:45am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–79–AD; Amendment 39–9505; AD 96–03–08]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires repetitive operational tests of the valve limit switch of the propeller brake. This amendment also provides for an optional terminating action for the repetitive tests. This amendment is prompted by a report that when the propeller brake was not properly engaged the crew did not receive a ''PROP BRAKE'' warning due to a faulty valve limit switch. The actions specified by this AD are intended to prevent a valve limit switch from failing to send input to the warning system; absence of a ''PROP BRAKE'' warning could result in the crew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning.

DATES: Effective March 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: 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 certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the Federal Register on November 8, 1995 (60 FR 56274). That action proposed to require repetitive operational tests of the valve limit switch of the propeller brake. That action also proposed to provide for the optional replacement of certain propeller brake control units with a new unit, which would constitute terminating action for the repetitive test requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 23 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 operational tests, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,380, or $60 per airplane, per test cycle.

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, 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 the following new airworthiness directive:

96–03–08 SAAB Aircraft AB: Amendment 39–9505. Docket 95–NM–79–AD.

Applicability: Model SAAB SF340A series airplanes, having serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, having serial numbers 160 through 369 inclusive; on which the propeller brake system is connected; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a valve limit switch from failing to send input to the ''PROP BRAKE'' warning system, which could result in the crew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, perform an operational test of the valve limit switch of the propeller brake in accordance with Saab Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995. Repeat the test thereafter at intervals not to exceed 100 flight hours.

(b) Replacement of a propeller brake control unit having part number (P/N) HP1410100–3, –5, or –7 with a new propeller brake control unit having P/N HP1410100–10, and performance of an operational test, in accordance with Saab Service Bulletin SAAB 340–61–033, dated March 6, 1995, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a propeller brake control unit having P/N HP1410100–3; or any unit having P/N HP1410100–5 or –7 unless that unit has been modified in accordance with Saab Service Bulletin SAAB 340–61–033, dated March 6, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

(f) The tests shall be done in accordance with Saab Service Bulletin SAAB 340–61–033, dated March 6, 1995. The replacement shall be done in accordance with Saab Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995. 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 SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. 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.

(g) This amendment becomes effective on March 13, 1996.

Issued in Renton, Washington, on January 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1520 Filed 2–9–96; 8:45am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–041–1–9604a; FRL–5345–5]

Approval and Promulgation of Implementation Plans Alabama: Revisions to the Alabama Department of Environmental Management Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 14, 1995, the State of Alabama through the Department of Environmental Management (ADEM) submitted a State Implementation Plan (SIP) submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. These revisions involve changes to Chapter 335–3–14—Air Permits. Chapter 335–3–14—Air Permits was amended to incorporate federal requirements for particulate matter 10 μg or smaller (PM–10).

DATES: This action is effective April 12, 1996 unless adverse or critical comments are received by March 13, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by ADEM may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is (404) 347–3555 ext. 4195.

SUPPLEMENTARY INFORMATION: On August 14, 1995, the State of Alabama through the ADEM submitted revisions to the Alabama SIP. These revisions were

made to the ADEM Administrative Code for the Air Pollution Control Program and include regulations to be incorporated into the SIP. EPA is approving the following revisions to the Alabama SIP. These revisions are more fully discussed in the official SIP submittal that is available at the Region IV office listed under the **ADDRESSES** section of this document.

Chapter 335–3–14—Air Permits was amended to incorporate federal requirements for particulate matter 10 μg or smaller (PM–10). The EPA changed the requirement for the Prevention of Significant Deterioration (PSD) increment from Total Suspended Particulate (TSP) to PM–10 because the Agency found that particulate matter 10 μg or smaller is able to cause adverse health effects in humans. Sections 335–3–14–.04 and 335–3–14–.05 were revised to reflect the change from TSP to the new PM–10 PSD increment.

Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 12, 1996 unless, by March 13, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 12, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2)].

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

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

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

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action would impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: December 4, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(68) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(68) The State of Alabama submitted a SIP submittal to revise the ADEM Administrative Code for the Air Pollution Control Program on August 14, 1995. These revisions involve changes to Chapter 335–3–14—Air Permits.

(i) Incorporation by reference.

(1) Amendments to the following sections of the Alabama regulations—335–3–14–.04, and 335–3–14–.05 which were adopted on March 21, 1995.

(ii) Other material. None.

[FR Doc. 96–2964 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ 43–1–7199; FRL–5336–5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Arizona State Implementation Plan (SIP) proposed in the Federal Register on July 26, 1995. The revisions concern rules from the Maricopa County Environmental Services Department (MCESD). The rules control VOC emissions from rubber sports ball manufacturing and metal casting operations. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the finding of nonsubmittal for these rules has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on March 13, 1996.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Department of Environmental Services, 2406 South 24th Street, Suite E–204, Phoenix, AZ 85034–6822.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191, email: james.duane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995, in 60 FR 38293, EPA proposed to approve the following rules into the Arizona SIP: MCESD's Rule 334, ''Rubber Sports Ball Manufacturing,'' and Rule 341, ''Metal Casting'' (the NPRM). The MCESD adopted Rule 334 on September 20, 1994, and Rule 341 on August 5, 1994. These rules were submitted by the Arizona Department of Environmental Quality to EPA on August 16, 1994 (Rule 341) and December 19, 1994 (Rule 334). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(b)(2)(C) requirement that nonattainment areas submit RACT rules for all major stationary sources of VOCs by November 15, 1992 (the RACT catch-up requirement). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in technical support documents available at EPA's Region IX office, dated March 27, 1995.

Response to Public Comments

A 30-day public comment period was provided in the NPRM. EPA received no comments on Rules 334 and 341.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. In addition, on the effective date of this action, any FIP clock associated with the finding of nonsubmittal is stopped. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by revising paragraph (c)(77) and adding paragraph (c)(81) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(77) Amended regulations for the following agency were submitted on December 19, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 310, adopted on September 20, 1994.

(*2*) Rule 334, adopted on September 20, 1994.

* * * * *

(81) Amended regulation for the following agency was submitted on August 16, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Environmental Services Department.

(*1*) Rule 341, adopted on August 5, 1994.

* * * * *

[FR Doc. 96–2974 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA 33–3–7130a; FRL–5339–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Santa Barbara County, Ventura County, Monterey Bay Unified, and Placer County Air Pollution Control Districts; and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Santa Barbara County Air Pollution Control District (SBCAPCD), Ventura County Air Pollution Control District (VCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), Yolo-Solano Air Quality Management District (YSAQMD), and Placer County Air Pollution Control District (PCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on three of these rules, MBUAPCD's Rule 416, 433, and 434, serves as a final determination that the finding of nonsubmittal for the rules has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. The revised rules control VOC emissions from operations involving the following: the coating or assembly of aircraft or aerospace vehicle parts and products, the use of organic solvents and organic solvent cleaners, the coating of miscellaneous metal parts and products, the application of adhesives, and the coating of flat wood paneling. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on April 12, 1996, unless adverse or critical comments are received by March 13, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SBCAPCD Rule 337—Surface Coating of Aircraft or Aerospace Vehicle Parts and Products, VCAPCD Rule 74.13—Aerospace Assembly and Component Manufacturing Operations, MBUAPCD Rule 416—Organic Solvents, MBUAPCD Rule 433—Organic Solvent Cleaning, MBUAPCD Rule 434—Coating of Metal Parts and Products, YSAQMD Rule 2.25—Metal Parts and Products Coating Operations, YSAQMD Rule 2.33—Adhesives Operations, PCAPCD Rule 238—Factory Coating of Flat Wood Paneling.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Santa Barbara, Ventura County, Monterey Bay, and Sacramento Metro areas. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. In amended section 182(b)(2) of the CAA, Congress also statutorily required nonattainment areas to submit RACT rules for all VOC sources covered by any control technique guideline (CTG) by November 15, 1992 (the RACT ''catch-up'' requirement).

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Santa Barbara Area and the Monterey Bay Area are classified as moderate, the Ventura County Area and the Sacramento Metro Area are classified as severe;[2] therefore, these

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Santa Barbara, Ventura County, Monterey Bay, and Sacramento Metro areas retain their designation of nonattainment and were classified by

areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. These areas were also subject to RACT catch-up requirement and the November 15, 1992 deadline.[3]

The State of California submitted many revised RACT rules for incorporation into its SIP. The following table includes the dates of when the districts adopted the rules, the dates that CARB submitted them to EPA, and the dates that they were found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V:[4]

Rule	Adoption	Submittal	Completeness
SBCAPCD 337	10/20/94	1/24/95	2/24/95
VCAPCD 74.13	1/22/91	4/5/91	5/21/91
MBUAPCD 416	4/20/94	7/13/94	9/12/94
MBUAPCD 433	6/15/94	9/28/94	11/22/94
MBUAPCD 434	6/15/94	9/28/94	11/22/94
YSAQMD 2.25	4/27/94	11/30/94	1/30/95
YSAQMD 2.33	9/14/94	11/30/94	1/30/95
PCAPCD 238	6/18/95	10/13/95	11/28/95

This notice addresses EPA's direct-final approval action for the above-mentioned rules.

All of these rules control VOC emissions from certain operations listed above. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). However, there are source categories for which no CTG has been written. The CTGs applicable to some of these rules are entitled, ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–015), ''Control of Volatile Organic Emissions from Solvent Metal Cleaning'' (EPA–450/2–77–022), and ''Control of Volatile Organic Emissions From Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling'' (EPA–450/2–78–032). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SBCAPCD's submitted Rule 337—Surface Coating of Aircraft or Aerospace Vehicle Parts and Products—includes the following major provisions:

- exempted certain coatings and operations,
- the reactive organic compound (ROC) limits for different coating categories,
- the control and capture efficiency requirements for add-on exhaust control equipment,
- recordkeeping requirements.

VCAPCD's submitted Rule 74.13—Aerospace Assembly and Component Manufacturing Operations—includes the following major provisions:

- a list of ROC limits for coatings and adhesives,
- the requirements for surface and general cleaning, add-on control equipment, and recordkeeping,
- an exemption for sources emitting less than 3 pounds of ROC per day and less than 200 pounds of ROC per year,
- a requirement to obtain an Authority to Construct or a Permit to Operate application under certain circumstances.

MBUAPCD Rule 416—Organic Solvents—includes the following major provisions:

- limits for emissions due to organic solvents that are baked, heat-cured, heat-polymerized, or exposed to flame,
- limits for emissions from photochemically and non-photochemically reactive solvents,
- recordkeeping requirements.

MBUAPCD Rule 433—Organic Solvent Cleaning—includes the following major provision:

- requirements for operational, equipment, alternative control requirements, and recordkeeping.

MBUAPCD Rule 434—Coating of Metal Parts and Products—includes the following provision:

- requirements for VOC content of coatings, add-on control alternatives, the qualification for extreme-performance coating, and recordkeeping.

YSAQMD Rule 2.25—Metal Parts and Products Coating Operations—includes the following major provisions:

- requirements for VOC content of coatings, application methods, add-on control alternatives, surface preparation and clean-up solvents,
- requirements for prohibition of specification, qualification for extreme performance coating classification, and recordkeeping.

operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe [60 FR 20237] April 25, 1995.

[3] California did not make the required SIP submittal to Monterey by November 15, 1992. On June 8, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. Three rules from Monterey Bay being acted on in this direct final rule were submitted in response to the EPA finding of failure to submit.

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

YSAQMD Rule 2.33—Adhesives Operations—includes the following major provisions:

- VOC limits for adhesives and adhesive primers,
- requirement to use equipment that is airless, air assisted airless, high volume low pressure, electrostatic spray, or disposable aerosol containers,
- requirements for using alternative emissions control systems,
- limiting the weight percent of VOCs in aerosol adhesives,
- recordkeeping requirements.

PCAPCD Rule 238—Factory Coating of Flat Wood Paneling—includes the following major provisions:

- limits on the VOC content of wood flat stock coating, adhesive, and inks,
- requirements for using alternative emissions,
- control systems, application equipment requirements.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the following rules: SBCAPCD Rule 337—Surface Coating of Aircraft or Aerospace Vehicle Parts and Products, VCAPCD Rule 74.13—Aerospace Assembly and Component Manufacturing Operations, MBUAPCD Rule 416—Organic Solvents, MBUAPCD Rule 433—Organic Solvent Cleaning, MBUAPCD Rule 434—Coating of Metal Parts and Products, YSAQMD Rule 2.25—Metal Parts and Products Coating Operations, YSAQMD Rule 2.33—Adhesives Operations, and PCAPCD Rule 238—Factory Coating of Flat Wood Paneling, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Therefore, if this direct final action is not withdrawn, on April 12, 1996, any FIP clock is stopped.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 12, 1996, unless, by March 13, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 12, 1996.

Regulatory Process

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

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct-final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (183)(B)(*3*), (198)(F)(*2*), (199)(C), (207)(C)(*3*), (214)(C), and (225)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(B) * * *

(*3*) Rule 74.13, adopted on January 22, 1991.

* * * * *

(198) * * *

(F) * * *

(*2*) Rule 416, adopted April 20, 1994.

* * * * *

(199) * * *

(C) Monterey Bay Unified Air Pollution Control District.

(*1*) Rules 433 and 434, adopted June 15, 1994.

* * * * *

(207) * * *

(C) * * *

(*3*) Rules 2.25 and 2.33, adopted April 27, 1994 and September 14, 1994, respectively.

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(214) * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 337, adopted October 20, 1994.

* * * * *

(225) * * *

(B) Placer County Air Pollution Control District.

(*1*) Rule 238, adopted June 8, 1995.

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[FR Doc. 96–2969 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL132–2–7237; FRL–5418–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving Illinois' request to exempt the Chicago ozone nonattainment area from the applicable oxides of nitrogen (NO_X) transportation conformity requirements. The Chicago ozone nonattainment area is classified as severe nonattainment for ozone. The request is based on the urban airshed modeling (UAM) conducted by the Lake Michigan Ozone Control Program (LMOP) which shows that additional NO_X reductions in the Chicago area will not contribute to attainment of the ozone standard. Approval of this NO_X exemption for transportation conformity will simplify the process of demonstrating that transportation plans and projects will not contribute to violations of the ozone standard. Comments received on the August 16, 1995, proposal are addressed in this rulemaking. The continued approval of this exemption is contingent on the results of subsequent modeling including the final ozone attainment demonstration and plan for the Chicago nonattainment area. This plan is expected to be submitted by mid-1997 and to incorporate the results of the Ozone Transport Assessment Group (OTAG) process. The attainment plan will supersede the initial modeling results as the basis for the waiver which USEPA is granting in this notice. If the attainment plan relies on NO_X controls on mobile sources in the Chicago ozone nonattainment area to demonstrate attainment, the NO_X waiver for transportation conformity will be reconsidered. To the extent the final plans achieve attainment of the ozone standard without additional NO_X reductions from mobile sources, the NO_X exemption would continue. USEPA's rulemaking action to reconsider the initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans. This NO_X waiver approval does not change the transportation conformity requirement for a NO_X budget test unless the attainment SIP shows that NO_X emissions could grow without limit without threatening attainment (as described in the November 14, 1995, amendment to the conformity rule).

EFFECTIVE DATE: This action will be effective March 13, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable State Implementation Plan (SIP), that transportation plans and transportation improvement programs (TIPs) contribute to emissions reductions in ozone nonattainment areas during the period before control strategy SIPs are approved by USEPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and 93.122 through 93.124), which establishes the so-called ''build/no-build test.'' This test requires a demonstration that the ''Action'' scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the ''Baseline'' scenario (representing the implementation of the current transportation plan/TIP). In addition, the ''Action'' scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule does not require the build/no-build test and less-than-1990 test for NO_X as an ozone precursor in ozone nonattainment areas where the Administrator determines that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and NO_X emissions ''as necessary'' to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NO_X for those ozone nonattainment areas for which USEPA determines that additional reductions of NO_X would not contribute to ozone attainment.

As explained below, the USEPA thru an amendment to it's transportation conformity rule, has changed the procedural mechanism through which a NO_X exemption from transportation conformity would be granted. Instead of a petition under 182(f), transportation conformity NO_X exemptions for ozone nonattainment areas that are subject to section 182(b)(1) need to be submitted as a SIP revision request. The Chicago ozone nonattainment area is classified as severe and, thus, is subject to section 182(b)(1).

The USEPA published on August 29, 1995, an interim final rule (60 FR 44762) which amended the transportation conformity rule and changed the statutory authority from 182(f) to 182(b)(1) of the Act for areas that are subject to section 182(b)(1). The interim final rule was effective immediately upon publication and provides the means for exempting areas subject to 182(b)(1) from NO_X provisions of the transportation conformity rule. In conjunction with the interim rule, USEPA published a proposal providing for further amendments to the transportation conformity rule and describing how USEPA intended to process section 182(b)(1) NO_X waivers (60 FR 44790). On November 14, 1995, the USEPA published a final rule (60 FR 57179)

after completing notice-and-comment rulemaking, which includes the provisions of the August 29, 1995, interim rule. The November 14, 1995, rule also addresses the NO_X budget requirement.

The June 20, 1995, SIP revision request from Illinois, has been submitted to meet the requirements of section 182(b)(1). A public hearing on this SIP revision request was held on July 17, 1995. The USEPA proposed to approve the SIP revision request on August 16, 1995, (60 FR 42491).

The Chicago severe ozone nonattainment area includes the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will. In evaluating the SIP revision request, the USEPA considered whether additional NO_X reductions would contribute to attainment of the standard in the Chicago area and also in the downwind areas of the LMOP modeling domain.

As outlined in relevant USEPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NO_X emission reductions to attainment of the ozone standard.

A summary of the UAM modeling and USEPA's review of the modeling and submittal are contained in the August 16, 1995, proposed rule (60 FR 42491). Review of the modeling results show a very definite directional signal indicating that application of NO_X controls in the Chicago ozone nonattainment area would exacerbate peak ozone concentrations not only in the Chicago area but also in the LMOP modeling domain. The LMOP modeling domain includes northern Indiana, western Michigan and eastern Wisconsin. The States and the Lake Michigan Air Directors Consortium (LADCo) have completed the validation process for the UAM modeling system to be used in the demonstration of attainment for the LMOP modeling domain.

II. Response to Comments on the Proposal

Four sets of comments were received on the proposed approval of the NO_X waiver. The Illinois Department of Transportation commented positively on the approval of the waiver. The comments opposed to the approval of the waiver are summarized in this section.

Comment

The State of New York is concerned by the claim that VOC only controls reduce both peak ozone and geographic extent of ozone exposure. Modeling in the northeast shows a need for NO_X reductions as well as VOC to reduce regional ozone. The model assumptions are questioned: whether the Federal motor vehicle control program (FMVCP) is assumed in future year (1996 and 2007) emission inventories; how the transport and boundary conditions were modeled; and how modeling across the board reductions are adequate for a specific source category exemption.

Response

Reductions from the FMVCP were assumed for the 1996 and 2007 emissions inventories for the UAM modeling.

Several modeling and data analyses were performed by Illinois and the Lake Michigan Air Directors Consortium (LADCO) [the technical representatives of the States in the LMOP] to examine the relative benefits of VOC versus NO_X emission controls. The modeling analyses included emissions sensitivity tests for several different basecase scenarios, including: (1) An original base period emissions inventory; (2) increased VOC emissions in the base period inventory (higher VOC/NO_X ratios); (3) increased base period VOC/NO_X ratios through either increased VOC emissions or decreased NO_X emissions; and (4) differences in photochemistry photolysis rates as applied in the Urban Airshed Model—Version IV (UAM–IV) (the photochemical dispersion model generally accepted and supported by the EPA) and in UAM–V (the photochemical dispersion model approved by the EPA for use in the LMOP).

Despite differences in the absolute and relative amounts of VOC and NO_X emissions in the sensitivity analyses, the analyses found that the modeled domain-wide peak ozone concentration, the coverage of modeled ozone concentrations exceeding 120 parts per billion (ppb), and the number of hours with modeled ozone concentrations exceeding 120 ppb, decreased in response to VOC emission reductions and increased in response to NO_X emission reductions (up to more than 60 percent controls for some episode analysis days) for all modeled episodes.

VOC and NO_X emission reductions were found to produce different impacts spatially. In and downwind of major urban areas, within the ozone nonattainment areas, VOC reductions were effective in lowering peak ozone concentrations, while NO_X emission reductions resulted in increased peak ozone concentrations. Farther downwind, within attainment areas, VOC emissions reductions became less effective for reducing ozone concentrations, while NO_X emission reductions were effective in lowering ozone concentrations. It must be noted, however, that the magnitude of ozone decreases farther downwind due to NO_X emission reductions was less than the magnitude of ozone increases in the ozone nonattainment areas as a result of the same NO_X emission reductions.

Analyses of ambient data by LMOP contractors provided results which corroborated the modeling results. These analyses identified areas of VOC- and NO_X-limited conditions (VOC-limited conditions would imply a greater sensitivity of ozone concentrations to changes in VOC emissions. The reverse would be true for NO_X-limited conditions) and tracked the ozone and ozone precursor concentrations in the urban plumes as they moved downwind. The analyses indicated VOC-limited conditions in the Chicago/Northwest Indiana and Milwaukee areas and NO_X-limited conditions further downwind. These results imply that VOC controls in the Chicago/Northwest Indiana and Milwaukee areas would be more effective at reducing peak ozone concentrations within the severe ozone nonattainment areas.

The consistency between the modeling results and the ambient data analysis results for all episodes with joint data supports the view that the UAM–V modeling system developed in the LMOP may be used to investigate the relative merits of VOC versus NO_X emission controls. The UAM–V results for all modeled episodes point to the benefits of VOC controls versus NO_X controls in reducing the modeled domain peak ozone concentrations.

Comment

There have been monitored violations of the ozone standard in the Chicago nonattainment area within the past year. Therefore, a NO_X exemption for the Chicago area would seem to conflict with the intent of the 1990 amendments to the Act.

Response

This NO_X exemption is based on the UAM submittals which demonstrate that NO_X reductions will not contribute to reaching attainment of the ozone standard by the 2007 attainment date as required by the Act. In such circumstances, the Act explicitly provides that the relevant area may be granted a waiver from the requirement to adopt and implement NO_X control measures.

Comment

NYSDEC requested additional time to better review the technical details of the modeling performed for the Chicago area and that all waivers be delayed until the review is complete.

Response

The LADCo modeling has been available to any interested parties since the modeling was initiated. Further, the docket records contain the submittal summarizing the results of the model runs conducted to support the NO_X waiver petition. These modeling results have been available to the public since July 13, 1994, when LADCo originally submitted the request for the USEPA to approve the NO_X waiver under section 182(f) for RACT, NSR and conformity. On March 6, 1995, the USEPA proposed to approve the section 182(f) NO_X waiver for the Lake Michigan area. The modeling has been available as part of the docket file for this proposed approval. Therefore, USEPA does not believe it is appropriate to delay action on the waiver request.

Comment

NYSDEC disagrees that the NO_X waiver rule should be a Table 3 action for signature by the Regional Administrator and because of the national implications of the NO_X exemption believes it should be a Table 1 action.

Response

The NO_X waiver for transportation conformity is a SIP revision request submitted by the State of Illinois. SIP revisions have been delegated to the Regional Administrator for signature under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. This NO_X waiver is applicable only for the purpose of relieving the need to meet the interim transportation conformity test for the Chicago area. In addition, the policy related to processing the NO_X waivers for transportation conformity has been coordinated at the national level.

Comment

Both Connecticut and the NYSDEC are concerned that the waiver for Chicago will create economic hardship and a need for increased emission reductions in the northeast.

Response

The USEPA has taken steps to assure that downwind areas will not be negatively impacted by NO_X exemptions. The USEPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_X emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO_X emissions could contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by USEPA on a NO_X exemption request under section 182(f) or 182(b)(1). That is, USEPA action to grant or deny a NO_X exemption request under section 182(f) or 182(b)(1) for any area would not shield that area from USEPA action to require NO_X emission reductions, if necessary, under section 110(a)(2)(D).

Significant new modeling analyses are being conducted by LADCO, USEPA and other agencies as part of the Ozone Transport Assessment Group (OTAG) process. The OTAG is a consultative process among the eastern States and USEPA. The OTAG process, which ends at the close of 1996, assesses national and regional control strategies, using improved modeling techniques. The goal of the OTAG process is for USEPA and the affected States to reach consensus on the additional regional and national emissions reductions that are needed for attainment of the ozone standard. Based on the results of the OTAG process, States are expected to submit by mid-1997 attainment plans which show attainment through local, regional, and national controls.

The OTAG plans to complete additional modeling between now and September 1996 using emissions data and strategies currently being developed among OTAG workgroups. These new analyses will improve the information available on NO_X and VOC impacts on ozone concentrations both in the LADCO area and over the eastern half of the United States. These analyses will for example, provide more accurate boundary conditions for the LADCO area analyses; this provides greater accuracy in both the attainment plan and in the decision regarding NO_X reductions contribution to attainment.

In light of the modeling completed thus far and considering the importance of the OTAG and attainment plan modeling efforts, USEPA grants this waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into the attainment plans being developed by the LADCO States. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_X waiver should be continued, altered or removed.

The attainment plans will supersede the initial modeling results which are the basis for the waiver which the USEPA grants in this notice. To the extent the attainment plans include NO_X controls on certain major stationary sources or mobile sources in the LADCO nonattainment areas, USEPA will remove the NO_X waiver for those sources. To the extent that plans achieve attainment without additional NO_X reductions from certain sources, the NO_X reductions would be considered excess reductions and, thus, the exemption would continue for those sources. USEPA's rulemaking action to reconsider this initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans.

Comment

The State of Connecticut is concerned that the LADCo modeling does not look at the larger regional issues. The USEPA Regional Oxidant Model showed that NO_X controls were necessary for large portions of the United States to reach attainment.

Response

Direct comparisons of ROM and UAM–V results must be conducted with caution and may produce conflicting results even though both modeling systems are performing adequately. The UAM–V modeling system is theoretically more complete and incorporates improved scientific principles and more area-specific input data. ROM, on the other hand, is a simpler modeling system with lower spatial resolution, more uncertain emission estimates, and no special treatment of meteorological phenomena, such as lake-breeze effects (critical factors in the Lake Michigan area), and individual source plumes for large sources. These differences in model formulation and data input resolution as well as differences in output resolution may preclude direct comparisons of the two models.

The significant new modeling analyses being conducted by LADCO, USEPA and other agencies as part of the OTAG process will address the issues of regional and local transport, as stated above.

Comment

The American Lung Association (ALA) and Citizens Commission for Clean Air in the Lake Michigan Basin (CCCALMB) comment that transportation conformity exemptions under section 182(b)(1) waive only the

section 176(c)(3)(A)(iii) requirement to contribute to specific annual reductions of NO_X. NO_X emissions must still be accounted for in the modeling and thus Illinois should submit NO_X emissions budgets along with the VOC budgets in the attainment and 15 percent plan submittals.

Response

The USEPA published a final rule amending the transportation conformity rule on November 14, 1995, (60 FR 57179) which addresses the issue of conformity to NO_X budgets in control strategy SIPs when a NO_X waiver for transportation conformity has been approved. The final rule is based on the August 29, 1995, (60 FR 44790) proposed rule and comments which were received on that proposal. The final rule requires consistency with NO_X motor vehicle emissions budgets in control strategy SIPs regardless of whether a NO_X waiver has been granted. However, the need to comply with the NO_X build/no-build test and less than 1990 tests for NO_X no longer apply to ozone nonattainment areas receiving a NO_X waiver. Furthermore, some flexibility is possible for areas that have been issued a NO_X waiver based upon air quality modeling data. This flexibility is described in the notice (60 FR 57183). The NO_X budget provisions will be effective 90 days from November 14, 1995. The Illinois NO_X exemption SIP revision request was submitted pursuant to section 182(b)(1) as provided for by the amended transportation conformity rule.

As noted previously, in light of the modeling completed thus far and considering the importance of the OTAG and attainment plan modeling efforts, USEPA is granting this waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into the attainment plans being developed by the LADCO States, including Illinois. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_X waiver should be continued, altered or removed.

In this action, USEPA is exempting the Chicago nonattainment area from the transportation conformity requirement to achieve further reductions of NO_X. The 15 percent plan which is the current control strategy SIP for the area does not establish a NO_X budget for motor vehicles. Future modeling for the attainment demonstration will set future NO_X emissions budgets or demonstrate that NO_X emissions may grow without affecting attainment.

Comment

The ALA and CCCALMB notes that NO_X contributes to decreased visibility, acidic deposition, fine particulates and nitrate loading in the Great Lakes.

Response

The focus of the NO_X waiver test relied on by Illlinois is on whether NO_X reductions contribute to attainment of the ozone NAAQS in the Chicago nonattainment area and, by its terms, does not require consideration of overall NO_X reduction benefits. Other air pollution problems are being dealt with as part of separate regulatory activities such as the acid rain program and FMVPC. None of the NO_X reduction programs in place or under development to address other air quality objectives are deleted or diminished by issuance of this waiver

Comment

The ALA and CCCALMB comment that a ''super-regional'' NO_X strategy should be adopted before USEPA permanently grants NO_X exemptions. Although the Ozone Transport Assessment Group (OTAG) is working on a strategy, there is no guarantee that the work will be completed.

Response

As discussed previously, in light of the modeling completed thus far and considering the importance of the OTAG and attainment plan modeling efforts, USEPA grants this waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into the attainment plans being developed by the LADCO States. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_X waiver should be continued, altered or removed.

The Chicago attainment plan will supersede the initial waiver which USEPA grants in this notice. If the attainment plan relies on NO_X controls on mobile sources in the Chicago nonattainment area to demonstrate attainment, USEPA will remove the NO_X waiver for those sources. To the extent the plans achieve attainment without additional NO_X reductions in the Chicago area, the NO_X exemption would continue for those sources. USEPA's rulemaking actions to reconsider the initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans.

III. Final Action

The USEPA is approving a waiver under section 182(b)(1) of the NO_X transportation conformity requirements for a build/no-build and less than-1990 interim test for the Chicago ozone nonattainment area as requested by the State of Illinois. In light of the modeling completed thus far and considering the importance of the OTAG process and attainment plan modeling efforts, USEPA grants this NO_X waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into attainment plans being developed by the LADCO States. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_X waiver should be continued, altered, or removed. USEPA's rulemaking action to reconsider the initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans.

The USEPA also reserves the right to require NO_X emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

This action will become effective on March 13, 1996.

IV. Miscellaneous

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

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA 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, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action will relieve requirements otherwise imposed under the Act, and hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial rule, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Oxides of nitrogen, Ozone, Transportation conformity.

Dated: January 23, 1996.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (l) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(l) Approval—The United States Environmental Protection Agency is approving under section 182(b)(1) of the Clean Air Act the exemption of the Chicago severe, ozone nonattainment area from the build/no-build and less than-1990 interim transportation conformity oxides of nitrogen requirements as requested by the State of Illinois in a June 20, 1995 submittal. In light of the modeling completed thus far and considering the importance of the OTAG process and attainment plan modeling efforts, USEPA grants this NO_X waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into attainment plans being developed by the LADCO States. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_X waiver should be continued, altered, or removed. USEPA's rulemaking action to reconsider the initial NO_X waiver may occur simultaneously with rulemaking action on the attainment plans. The USEPA also reserves the right to require NO_X emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas. The Chicago severe ozone nonattainment area includes the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will.

[FR Doc. 96–2966 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MS15–1–6252a; MS20–2–9605a; FRL–5400–9]

Clean Air Act Approval and Promulgation of Revisions to the Mississippi State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mississippi State Implementation Plan (SIP) submitted on June 14, 1991, and January 26, 1994, by the State of Mississippi through the Department of Environmental Quality (MDEQ). These SIP revisions incorporate changes to Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants''. The proposed revisions specify prohibited open burning practices and set conditions for which open burning practices may occur. These SIP revisions change the open burning restriction policy to be more consistent with federal regulations as specified in 40 CFR parts 257 and 258.

DATES: This action is effective April 12, 1996, unless notice is received by March 13, 1996, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345

Courtland Street, Atlanta, Georgia 30365.
Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 ext. 4216.

SUPPLEMENTARY INFORMATION: On June 14, 1991, and January 26, 1994, MDEQ submitted revisions to the Mississippi SIP incorporating changes to Regulation APC–S–1, ''Air Emission Regulations for the Prevention, Abatement and Control of Air Contaminants.'' The proposed revisions specify prohibited open burning practices and set conditions for which open burning practices may occur. These SIP revisions change the open burning restriction policy to be consistent with federal regulations as specified in 40 CFR 257. Public hearings for these revisions were held on March 27, 1991, and November 24, 1993, and became state effective May 28, 1991, and January 9, 1994, respectively. The major revisions are described below:

Section 1. General

1. Paragraph one was revised by deleting Section 49 17 17, Mississippi Code of 1972, recompiled, and adding Miss. Code Ann. § 49–17–17.

2. Paragraph two ''Exceptions'' was deleted and pargraph three was renumbered as two. A new paragraph three was added. This paragraphs states, ''In the event of a conflict between any of the requirements of these regulations and/or applicable requirements of any other regulation or law, the more stringent requirements shall be applied.''

Section 2. Definitions

1. The following definitions were added:

10. ''Excess (or excessive) emission''
16. ''Opacity''
24. ''Recreational area''
25. ''Residential area''
26. ''Shutdown'' relating to fuel burning equipment
29. ''Soot blowing''
31. ''Startup'' relating to fuel burning equipment
34. ''Upset''

2. The State revised the following definitions to meet EPA policy:

7. ''Air pollution''
8. ''Atmosphere''
13. ''Modification''
15. ''Open burning''
17. ''Particulate matter emissions''
19. ''PM–10 emissions''
21. ''Process weight''
23. ''Standard conditions''

3. The following definition was deleted:

22. ''Ringelmann Chart''

The section was also re-alphabetized and renumbered to simplify finding definitions.

Section 3. Specific Criteria for Sources of Particulate Matter

1. Paragraph 1(a) was revised to give a reference paragraph for allowed exceptions to the forty (40) percent opacity rule.

2. Paragraph 1(c) was deleted. Paragraph 1(d) was then renumbered as 1(c), and edited to add 60 percent opacity and to delete references to Ringelmann Smoke Chart.

3. Paragraph 4(a) was deleted and replaced by new paragraphs 4(a)(1), 4(a)(2), 4(a)(3) which detail limits to emissions from fuel burning installations.

4. Paragraph 6(a) was replaced with a new paragraph which gives the formula to be used when calculating the particulate emission rate from a manufacturing process.

5. Paragraph 6(b) was revised to add an effective date of January 25, 1972.

6. Paragraph 7 was revised to state that open burning is prohibited with exceptions for the infrequent burning of agricultural waste, silvicultural waste, land clearing debris, emergency cleanup operations, and ordnance.

7. Paragraphs 7(b), 7(c), 7(d), 7(e), 7(f), 7(h), 7(i), 7(j), 7(k), and 7(l) which listed exceptions to open burning restrictions were deleted.

Section 6. New Sources

1. Paragraph 4. Infectious Waste Incineration was added. This paragraph details the conditions with which all infectious waste incinerators which incinerate only wastes generated on site and are installed after December 9, 1993, must comply.

2. Paragraph 4b Commercial Incinerators was added. This paragraph details the requirements for infectious waste incinerators which incinerate wastes generated off site.

Section 8. Provisions for Hazardous Air Pollutants

1. EPA is not acting on this section because these regulations are federally enforceable through 40 CFR Part 61.

Section 9. Stack Height Considerations

1. The paragraph titled Exemptions From Rules and Regulations which discussed emission exemptions during upsets and maintenance was deleted. Exceptions to the rule are now detailed in Section 10.

Section 10. Provisions for Upsets, Startups, and Shutdowns

1. This section is being adopted. Paragraph 1. Upsets, states what circumstances must be met so that an upset will constitute an affirmative defense to an enforcement action brought for noncompliance with emission standards or other requirements.

2. Paragraph 2. Startups and Shutdowns, states that emission limitations applicable to normal operation apply during startups and shutdowns and list exceptions to this rule.

3. Paragraph 3. Maintenance, lists factors that a source must demonstrate to show that maintenance constitutes an affirmative defense to an enforcement action brought for noncompliance with emission standards or other requirements.

These provisions are consistent with EPA and Clean Air Act requirements.

Final Action

EPA is approving the above referenced revisions to the Mississippi SIP. This action is being taken without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 12, 1996, unless, by March 13, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 12, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2)).

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

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

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

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain duties. EPA has examined whether the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 1, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Z—Mississippi

2. Section 52.1270, is amended by adding paragraph (c)(27) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(27) Amendments to Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants'' to be consistent with federal regulations as specified in 40 CFR Part 257.

(i) Incorporation by reference. Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants'' effective January 9, 1994, except SECTION 8. PROVISIONS FOR HAZARDOUS AIR POLLUTANTS.

(ii) Additional Material. None.

[FR Doc. 96–2962 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NE–7–1–71549; FRL–5399–7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives full approval to the State Implementation Plan (SIP) submitted by the state of Nebraska for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151.

DATES: This action is effective April 12, 1996 unless by March 13, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: Section 176(c) of the Clean Air Act, as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to an SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of

the National Ambient Air Quality Standards (NAAQS), and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, the EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The General Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and non-Federal entities (section 51.851(b)).

On November 6, 1991, the EPA promulgated a nonattainment designation for the area surrounding the Asarco lead refinery in Omaha, Nebraska, in response to violations of the lead NAAQS. Sections 51.851 and 93.151 of the General Conformity rule require that states submit an SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, an SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

On June 14, 1995, the state of Nebraska submitted an SIP revision meeting the requirements of §§ 51.851 and 93.151 of the General Conformity rule. The submission adopts by reference 40 CFR part 93, subpart B, except 40 CFR 93.151. The omitted section contains the criteria for EPA approval of General Conformity SIP revisions, and also states the effect of EPA approval of an SIP revision. It is not a necessary component of the state's substantive rules governing general conformity determinations.

The Nebraska rule also modifies 40 CFR 93.160(f) and 40 CFR 93.160(g) to adapt the language in the Federal regulations to the state rule. It deletes the language in 93.160(f) stating that the ''implementation plan revision required in § 93.151 shall provide that,'' and retains the substantive requirement in paragraph (f). It also revises paragraph (g) to refer to adoption and approval of the Nebraska SIP revision, in place of the reference in EPA's rule to SIP revisions generally.

This SIP revision was adopted by the Nebraska Environmental Council on December 2, 1994. The rule was signed by the Governor on May 24, 1995, and became effective on May 29, 1995.

Because the Nebraska rule adopts the substantive requirements of EPA's rule by reference, it meets the criteria in §§ 51.851 and 93.151 for approval of General Conformity SIP revisions.

EPA Action

By this action EPA grants full approval of Nebraska's June 14, 1995, submittal. This SIP revision meets all of the requirements set forth in 40 CFR 51.851 and 93.151.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule, based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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

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

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

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

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate. Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 14, 1996.

Dennis Grams,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(42) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(42) A Plan revision was submitted by the Nebraska Department of Environmental Quality on June 14, 1995, which incorporates by reference EPA's regulations relating to determining conformity of general Federal actions to State or Federal Implementation Plans.

(i) Incorporation by reference.

(A) A revision to title 129, adding chapter 40, entitled ''General Conformity'' was adopted by the Environmental Quality Council on December 2, 1994, and became effective on May 29, 1995.

[FR Doc. 96–2975 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[Region II Docket No. 148, NJ25–1–7282; FRL–5409–4]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is giving a limited approval to part of a request from New Jersey to revise its State Implementation Plan (SIP) for the control of carbon monoxide (CO) to incorporate New Jersey's oxygenated gasoline program. New Jersey submitted these revisions in response to requirements established under the Clean Air Act, as amended in 1990. EPA is approving New Jersey's oxygenated gasoline program for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island consolidated metropolitan statistical area (CMSA) as the program applies for the four months from November 1 through the last day of February. In previous proposals for the States of New York and Connecticut, EPA has proposed to determine that those four months are the entire period when the New York-Northern New Jersey-Long Island CMSA is prone to high ambient concentrations of CO. In a separate document published in today's Federal Register, EPA is soliciting comment on this determination for the limited purpose of inviting comment on additional information concerning emission modeling related to New Jersey's portion of the multi-state CMSA.

EFFECTIVE DATE: This final rule is effective on March 13, 1996.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 290 Broadway, 16th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York 10007–1866 (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

Motor vehicles are significant contributors of CO emissions, which are harmful to human health. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen in the fuel enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting in cold weather.

The Clean Air Act (Act) sets forth a number of requirements for states with areas designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) set for CO to submit revisions to their State Implementation Plans (SIPs). Among these is a requirement under section 211(m) that states with CO nonattainment areas at or above a 9.5 parts per million (ppm) design value implement 2.7 percent oxygenated gasoline programs by November 1, 1992 and submit these programs as SIP revisions. This requirement applies to New Jersey because the State contains a portion of the New York-Northern New Jersey-Long Island nonattainment area, which has a design value for CO above 9.5 ppm. The requirement had also originally applied to Southern New Jersey as well; however, that area, which is part of the Philadelphia CO nonattainment area, is currently in attainment for CO and, as such, is no longer required to implement an oxygenated gasoline program. 60 FR 62741, December 7, 1995. The New York-Northern New Jersey-Long Island CO nonattainment area is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA) and includes the New Jersey Counties of Bergen, Essex, Hudson, Union, and parts of Passaic. The nonattainment area in Passaic County includes the Cities of Clifton, Paterson, and Passaic. New Jersey's portion of the larger CMSA, within which oxygenated fuel sale is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Ocean, Passaic, Somerset, Sussex, Union and Warren.

On November 15, 1992, New Jersey submitted to EPA its oxygenated fuels program contained in New Jersey Administrative Code Title 7, Chapter 27, Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels'' (adopted September 1, 1992, and operative November 1, 1992). The program required oxygenated fuel to be supplied during a CO control period of seven months each year, extending from October 1 through April 30. EPA proposed to approve this submission, along with a number of other revisions to New Jersey's CO SIP, on November 10, 1994 (59 FR 56019). On February 7, 1995, New Jersey modified its oxygenated fuels regulations to shorten the length of the control period to four months each year, from November 1 through the last day of February. 27 N.J.R. 787(a), February 21, 1995. This modification has not been submitted to EPA as a SIP revision. Subsequently, on September 15, 1995, in the course of actions on the New York and Connecticut CO SIPs, EPA proposed to find that the appropriate length of the control period for the entire New York-

Northern New Jersey-Long Island CMSA is four months. 60 FR 47911 and 60 FR 47907. EPA also proposed to approve New York's oxygenated fuels program and, in a separate notice, Connecticut's oxygenated fuels program, both for a four-month control period. 60 FR 47907, September 15, 1995; 60 FR 47911, September 15, 1995. On September 28, 1995, EPA received a request from New Jersey to waive the oxygenated fuel requirement for the New Jersey portion of the New York-Northern New Jersey-Long Island CMSA under section 211(m)(3)(A). This request is still pending.[1] Finally, on December 7, 1995, EPA published a direct-final rule (with an accompanying proposal) to redesignate the Southern New Jersey Camden County CO nonattainment area to attainment. 60 FR 62741.

In today's action, EPA is approving New Jersey's oxygenated fuels program for Northern New Jersey for a four-month control period; this control period length corresponds to the regulation that is currently in effect in New Jersey and to the minimum length of control period specified in section 211(m) of the Act. This approval finalizes the proposed approval of New Jersey's oxygenated gasoline program for four of the seven months proposed.

Oxygenated Fuels Requirements

The section 211(m) oxygenated fuels requirement applies to all states with CO nonattainment areas with design values of 9.5 ppm or greater based on data for the years 1988 and 1989. Each state's oxygenated gasoline program must require gasoline sold or dispensed in the larger of the CMSA or the metropolitan statistical area in which the nonattainment area is located to contain not less than 2.7 percent oxygen by weight during the control period. The control period is that portion of the year in which the area is prone to high ambient concentrations of CO, as determined by the EPA Administrator. The length of the control period shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. (Clean Air Act section 211(m)(2).) EPA announced guidance on the establishment of control periods by area in the Federal Register on October 20, 1992.[2] However, in subsequently proposing to approve the New York CO SIP revision, EPA proposed to determine that the appropriate length of the control period for the New York-Northern New Jersey-Long Island CMSA is four months. 60 FR 47911, September 15, 1995. In a separate related notice published in today's Federal Register, EPA is soliciting comment on this determination for the limited purpose of inviting comment on additional information concerning emission modelling related to New Jersey's portion of the multi-state CMSA.

State Submittal

Section 110, part D of Title I, and section 211(m) of the Act required New Jersey to submit by November 15, 1992, revisions to the State's CO SIP, including an oxygenated gasoline program for the New Jersey portions of the New York-Northern New Jersey-Long Island CMSA. As part of its November 15, 1992 submittal, the New Jersey Department of Environmental Protection (NJDEP) submitted a revised rule—Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 25 contains the requirements for New Jersey's oxygenated gasoline program, which was adopted by New Jersey on September 1, 1992.

Summary of EPA Approval

In this action, EPA is approving New Jersey's oxygenated gasoline program for Northern New Jersey as a revision to the New Jersey CO SIP, but is confining this action to approval of a program with a four month control period. For two reasons, it is appropriate at this time for EPA to take final action to approve New Jersey's oxygenated gasoline program for four months of the seven proposed.

First, at a minimum, any approved program would have to include a control period of at least four months to meet the statutory requirements in section 211(m) of the Act. However, EPA has not yet made a final determination that the period prone to high ambient concentrations of CO in the New York-Northern New Jersey-Long Island CMSA is limited to four months, and EPA did not propose such a determination in the proposed approval of the New Jersey submission. EPA will make the final determination of control period length for the entire CMSA in a final action on the New York and/or Connecticut proposals, as supplemented by the additional data in today's companion notice.[3] 60 FR 47911, September 15, 1995; 60 FR 47907, September 15, 1995. However, EPA is certain now that, given the statutory four-month minimum, the four-month period covered by today's final action will be an essential element of any fully approvable New Jersey oxygenated gasoline SIP submission. Thus, there is no reason for EPA to await the outcome of the separate notice-and-comment process on the determination of the appropriate control period before approving New Jersey's SIP submission for four months.

Second, New Jersey currently has an oxygenated gasoline program with a control period consistent with this determination. As explained further below, EPA cannot approve the New Jersey submission for the remaining three months so long as the State's laws do not currently authorize a program for that additional period.

In addition, in this rulemaking EPA is finalizing its approval of the other elements of New Jersey's oxygenated gasoline program. Since most of the elements of New Jersey's oxygenated gasoline program remain unchanged from those proposed for approval, EPA here incorporates by reference the earlier proposal for all details of the oxygenated gasoline program apart from the length of the control period and references to the Camden nonattainment area.[4] In a subsequent final rule EPA will address the other revisions to the New Jersey CO SIP, not related to the oxygenated gasoline program, that were proposed to be approved in the November 10, 1994 notice.

In this action, EPA is also making the determination that, if and when EPA takes final action determining that the control period for this area is the four-month period from November through February, then New Jersey's oxygenated gasoline SIP submission shall be deemed to meet fully the requirements of section 211(m) of the Act, and this limited approval of the four-month part of the New Jersey submission shall be deemed converted to a full approval of that part.

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[1] EPA has decided to act on New Jersey's oxygenated gasoline program at this time, even though the Agency has not completed review of the waiver request. EPA will revisit this SIP approval if future action on the waiver request makes that necessary.

[2] *See,* ''Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability,'' 57 FR 47849 (October 20, 1992).

[3] The reader is referred to these notices for further information on EPA's proposed determination.

[4] As the Camden nonattainment area is in the process of being redesignated to attainment without approval and retention of an oxygenated fuels program, the references to the Camden area and the ''Southern Control Area'' are no longer applicable.

Discussion

Approval of the SIP Submission for a Four-Month Control Period

In this action EPA is approving New Jersey's oxygenated gasoline program only as it applies from November 1 through the last day of February each year. This limited approval is appropriate given its consistency with the minimum length of control period required by statute and New Jersey's current regulatory authority, which is confined to that four-month period.

Section 211(m)(2) of the Act requires oxygenated gasoline to be sold during a control period established by the EPA Administrator based on air quality monitoring data. This period must be no less than four months, unless the state demonstrates that, because of meteorological conditions, a reduced period would assure that there would be no exceedances of the CO NAAQS outside of that period. Barring such a demonstration, which none of the three affected States has attempted to make, this provision requires EPA to approve an oxygenated fuels program with at least a four-month control period. Thus, EPA must approve at least four months of the seven months of the oxygenated gasoline program proposed for approval in November 1994. The issue of whether any additional months should be approved will be automatically addressed when EPA takes final action on its proposal to modify the length of the control period, as discussed further below.

EPA's limited approval of the New Jersey oxygenated gasoline regulation for a four-month control period also ensures that the approval complies with the Act's requirement that states have authority to implement SIP provisions. Section 110(a)(2)(E)(i) sets as one condition for SIP approval that the SIP must provide ''necessary assurances that the State * * * will have adequate * * * authority under State * * * law to carry out such [SIP].'' Because New Jersey's current regulations provide for a four-month control period, EPA's approval of the SIP revision for the identical control period tailors the approval to New Jersey's current regulation and ensures that the revision is approvable under section 110(a)(2)(E).

Finally, while EPA has proposed to determine that the control period for the area be limited to four months, that determination need not be finalized in order to approve a four month control period at this time. EPA believes it is appropriate to approve New Jersey's oxygenated fuel requirement for four months because this approval would not increase the stringency of the State submission, a four-month control period is a necessary element of the statutorily required program, and the period conforms with the State's current regulation. In addition, this partial approval ensures that New Jersey's four-month control period will be consistent with the proposed approval of four-month control periods in the respective portions of the New York-Northern New Jersey-Long Island CMSA for Connecticut and New York.

Consequences of Final Determination of Four-Month Control Period

There are several consequences that would flow from a final determination by EPA that four months is the correct control period for this area. First, EPA is determining through this final action that, if and when EPA takes final action determining that the control period for the area is the four-month period from November through February, then the corresponding four-month part of the New Jersey SIP submission shall be deemed to meet fully the requirements of section 2ll(m) of the Clean Air Act, and this limited approval of the four-month part of the New Jersey submission shall be deemed converted to a full approval of that part. There are no sanctions implications from this limited approval.[5]

Second, if and when EPA takes final action determining that the control period for the area is the four-month period from November through February, that action shall be deemed to withdraw EPA's proposed November 10, 1994 approval of the remaining three months of the period covered in New Jersey's seven-month SIP submission. Such a determination would preempt New Jersey from establishing a longer control period due to the prohibition of certain state fuel controls in section 211(c)(4)(A) and associated regulation promulgated by EPA on December 15, 1993. (59 FR 7716, February 16, 1994).

Section 211 of the Clean Air Act authorizes EPA to regulate fuels and fuel additives. Under section 211(c)(1), the Administrator has the authority to control or prohibit the manufacture and sale of fuels and fuel additives for motor vehicles on the grounds of danger to public health or impairment of emissions control devices. Section 211(c)(4)(A) provides that where the Administrator has set such a control or prohibition under section 211(c)(1) applicable to a characteristic or component of a fuel or fuel additive, no state may set a control or prohibition respecting that characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. This provision preempts state fuel controls that are nonidentical to federal section 211(c)(1) controls on the same characteristic or component.

EPA promulgated the RFG program under the authority of sections 211(k) and 211(c)(1) (59 FR 7716, February 16, 1994). RFG must contain 2.0% oxygen content by weight, and it is required year-round in the New York-Northern New Jersey-Long Island CMSA. 40 CFR section 80 subpart D. In the absence of section 211(m), section 211(c)(4)(A) would preempt New Jersey from establishing its own minimum oxygen content requirements different from the RFG requirements in RFG areas. Because section 211(m) is a specific, more stringent requirement, it overrides the general preemption provision as to the specific control period applicable in each area, and states are not preempted from complying with section 211(m) in RFG areas during that control period. However, states are still preempted from setting nonidentical controls or prohibitions on oxygen content in RFG areas to the extent that such controls or prohibitions are not mandated by section 211(m). This prohibition on state fuel controls may be waived if a state shows that a nonidentical fuel control is necessary to achieve a NAAQS. (CAA section 211(c)(4)(C)).

EPA has proposed to determine that the New York-Northern New Jersey-Long Island CMSA is prone to high ambient concentrations of CO during the four-month period of November through February. Section 211(m) requires states to adopt 2.7% oxygenated gasoline requirements only for the period prone to high ambient concentrations of CO, as determined by the Administrator. Thus, upon finalization of EPA's proposed determination, section 211(m) would require New Jersey to adopt a 2.7% minimum oxygen content standard for only the four months of November through February. The RFG oxygen content requirement preempts any state from prescribing or enforcing oxygen content requirements in this RFG area that go beyond what is mandated by section 211(m). Thus, New Jersey would be preempted from enforcing an oxygenated gasoline program for the additional months of October, March and April.

[5] This action is a limited approval because, until EPA makes a final determination on the length of the control period for this area, EPA cannot finally determine whether New Jersey's SIP submission meets fully the requirements of section 211(m) of the Act. This action is also a partial approval because EPA is approving only four months of the seven-month oxygenated gasoline program submitted by New Jersey.

Section 110(a)(2)(A) requires SIPs to include ''enforceable * * * control measures.'' EPA only has authority to approve the enforceable portion of the State submission, which, upon EPA's determination, would correspond to a four-month control period. Thus, EPA would be authorized to approve New Jersey's oxygenated fuel requirements only for the months of November through February. As a consequence, a final determination of a four-month control period will be deemed to withdraw EPA's November 10, 1994 proposed approval of the remaining three months of the period covered in New Jersey's seven-month SIP submission.

Finally, approving New Jersey's oxygenated gasoline program only for a four-month control period would be consistent with the proposed approval of four-month control periods in the respective portions of the New York-Northern New Jersey-Long Island CMSA for Connecticut and New York.

Final Action

EPA is approving New Jersey's Subchapter 25 oxygenated fuels program for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island CMSA as it applies for a control period of November 1 through the last day of February. In addition, as described above, EPA is determining through this final action that, if and when EPA takes final action determining that the control period for the area is the four-month period from November through February, then the corresponding four-month part of the New Jersey SIP submission shall be deemed to meet fully the requirements of section 2ll(m) of the Clean Air Act, and this limited approval of the four-month part of the New Jersey submission shall be deemed converted to a full approval of that part.

Nothing in this 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.

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

SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. 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).

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

Through submission of this SIP or SIP revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that, in any event, this final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(l) of the CAA, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 18, 1996.

William J. Muszynski,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(58) Revisions to the New Jersey State Implementation Plan (SIP) for carbon monoxide concerning the oxygen content of motor vehicle gasoline, dated November 15, 1992 submitted by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference.

(A) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code Chapter 27, Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' effective October 5, 1992 (as limited in § 52.1605).

3. Section 52.1605 is amended under Title 7, Chapter 27, by removing the two existing entries for subchapter 25 and adding a new entry for subchapter 25 in numerical order to read as follows:

§ 52.1605 EPA Approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 25, ''Control and Prohibition of Air, Pollution by Vehicular Fuels;''.	Oct. 5, 1992.	[Insert date of publication and FR page citation].	Approves 1992 revision of Subchapter 25 except that (1) oxygenated gasoline provisions are approved only as they apply to the four month control period from November 1 through the last day in February, consistent with the February 21, 1995 NJDEP modification of N.J.A.C. 7:27–25; and (2) oxygenated gasoline provisions are approved only as they apply to the Northern New Jersey portion of the New York-Northern New Jersey-Long Island consolidated metropolitan statistical area.
* * * * * * *			

[FR Doc. 96–2581 Filed 2–9–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[PA 70–1–7207a; FRL–5338–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on one major source and establishes permit conditions to limit eight source's emissions to below major source threshold levels. The intended effect of this action is to approve source-specific plan approvals and operating permits, which establish the above-mentioned requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective April 12, 1996 unless notice is received on or before March 13, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

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

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554, at the EPA Region III address above, or by E-mail at Rehn.Brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 1, 1995, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision consists of a group of plan approvals and operating permits for individual sources of volatile organic compounds and/or nitrogen oxides located in Pennsylvania. This rulemaking addresses those plan approvals and operating permits pertaining to the following sources: (1) James River Corporation—Chambersburg, (2) Appleton Papers, Inc.—Cumberland County , (3) Air Products & Chemicals, Inc.—Trexlortown, (4) Elf Atochem North America, Inc., (5) York City Sewer Authority—Manchester Township, (6) Glasgow, Inc.—Ivy Rock Plants, (7) Glasgow, Inc.—Spring House Plants, (8) Glasgow, Inc.—Catanach Plant, (9) Glasgow, Inc.—Freeborn Asphalt Plant. The remaining plan approvals and operating permits submitted on August 1, 1995 with those being approved today will be addressed in a later rulemaking notice.

Pursuant to section 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. Major source size is determined by a source's location, the classification of the area where the source is located, and whether it is located in an ozone transport region (OTR)—as established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area is classified as severe, and consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties. For severe ozone nonattainment areas, the Clean Air Act requires RACT for sources emitting 25 tons or more per year of VOCs, or for sources emitting at least 25 tons per year of NO_X.

The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas, or are designated attainment for ozone. However, under section 184 of the CAA, moderate ozone nonattainment area requirements (including RACT as defined in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Clean Air Act requires RACT for sources emitting 50 tons per year or more of VOCs, or 100 tons per year or more of NO_X.

The August 1, 1995 Pennsylvania submittals that are the subject of this notice, are meant to satisfy the RACT requirements for one source in Pennsylvania and to limit the potential VOC and/or NO_X emissions at eight sources to below the major source size threshold in order to avoid RACT requirements.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document and will not be reiterated in this notice. Briefly, EPA is

approving one operating permit as RACT and eight operating permits as a revision to the Pennsylvania SIP to limit those source's emissions to below the major source threshold. Several of the operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for VOC or NO_X RACT.

RACT Permit

EPA is approving the operating permit (OP 28–2006) for the James River Corporation's facility, located in Chambersburg, Franklin County. James River Corporation operates a lithographic printing facility which is considered a major source of VOC emissions. The specific emission limitations and other RACT requirements for this source is summarized in the accompanying technical support document, which is available from EPA's Region III office. A source-specific RACT emission limitation that is approved into the Pennsylvania SIP is only the one which has been officially submitted for approval on August 1, 1995, and is the subject of a rulemaking notice. Emission limitations approved within this notice will remain unless and until they are replaced pursuant to 40 CFR part 51 and approved by the U.S. EPA.

Synthetic Minor Source Permits (Sources Located in the OTR Portion of Pennsylvania, but Outside of Philadelphia)

The three sources below are located outside of the Philadelphia ozone nonattainment area, but lie within the Northeast OTR established by the Clean Air Act. Each of these three sources would have the potential to emit at least 50 tons per year of VOCs and/or 100 tons per year of NO_X, and without limiting permit conditions or controls, could be defined as a major source under the Clean Air Act. However, each of these sources has agreed to enforceable permit conditions which limit actual emissions to below major source thresholds.

Therefore, EPA is approving the operating permit (OP 21–2004) for Appleton Papers, Inc., located in Lower Allen Township in Cumberland County. Appleton Papers is a surface coating installation, specializing in the production of carbonless reproduction paper and, without limiting permit conditions or controls, would be a major source of both NO_X and VOCs. Appleton Papers has agreed to permit conditions limiting their NO_X emissions to below the major source threshold. Additionally, Appleton Papers is subject to VOC RACT for surface coating operations under state regulation 25 PA Code, 129.52(b), and is therefore not required to submit a case-by-case RACT determination for its VOC emissions.

Air Products, Inc.'s Trexlortown facility in Lehigh County operates numerous boilers, heaters, and support equipment, and without limiting permit conditions or controls, would be considered a major source of NO_X. However, EPA is approving an operating permit (OP 39–0008) for Air Products and Chemicals Trexlortown facility which caps NO_X emissions to below 100 tons per year, and qualifies the source as a synthetic minor.

EPA is approving the operating permit (OP 67–2013) for the York City Sewer Authority's waste water treatment plant, located in Manchester Township in York County. Without permit limitations or controls, this facility would be considered a major source of NO_X. However the City has agreed to permit limitations which qualify the plant as a synthetic minor source.

The approval of the synthetic minor permit conditions for the sources above limit the emissions at each of these facilities to less than the major source thresholds, and allow the sources to avoid being subject to major source RACT requirements. For details of the permit emission limitations for each of the above sources, please refer to the technical support document contained in the docket for this action.

Synthetic Minor Permits (Sources Within the Philadelphia Nonattainment Area)

The five sources below are located within the five-county Philadelphia ozone nonattainment area. Each of these sources has the potential to emit at least 25 tons per year of VOCs and/or 25 tons per year of NO_X, and each would therefore be considered a major source. However, these sources have agreed to enforceable permit conditions which limit actual emissions to below major source thresholds, and they are qualified as synthetic minor sources.

Elf Atochem is a chemical research and development facility located in Upper Merion Township in Montgomery County. Elf Atochem would be considered a major source of NO_X (without limiting permit conditions or controls). However, since the company's operating permit (OP 46–0022) limits its NO_X emissions to below the major source threshold, EPA is approving the permit as a synthetic minor.

EPA is approving the operating permit (OP 46–0043) for Glasgow, Inc.'s two Ivy Rock plants, located in Plymouth Township in Montgomery County. Glasgow, Inc. operates asphalt batching facilities in Plymouth Township which, without permit limitations or controls, would be considered a major source of both VOC and NO_X. Glasgow, Inc has capped their NO_X and VOC emissions from its Ivy Rock facilities operating permit to below major source thresholds, and qualifies for consideration as a synthetic minor source.

EPA is approving the operating permit (OP 46–0029) for Glasgow, Inc.'s two Spring House plants, located in Montgomery County. Glasgow operates asphalt batching plants in Montgomery Township, which would be defined as a major source of both VOC and NO_X, without permit limitations or controls. Since the source has limited these emissions to below major source thresholds, EPA is approving the source's permit as a synthetic minor.

EPA is approving the operating permit (OP 15–0021) for Glasgow, Inc.'s Catanach plant, located in East Whiteland Township in Chester County. Without permit limits or controls, Glasgow's Catanach plant would be considered a major source of both VOC and NO_X. The source has limited its emissions to below major source thresholds, and qualifies as a synthetic minor.

EPA is approving the operating permit (OP 23–0026) for Glasgow, Inc.'s Freeborn plant, located in Springfield Township in Delaware County. Glasgow's Freeborn plant would also be considered a major source of both VOC and NO_X, without permit limitations or controls, but the source has agreed to limit its emissions as a synthetic minor.

The approval of the synthetic minor permit conditions for these sources limit emissions at these facilities to less than major source thresholds, and allow the sources to avoid being subject to major source RACT requirements. For details of the emission limitations contained in the permits for each of the above sources, refer to the technical support document contained in the docket for this action.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 12, 1996 unless, by March 13, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be amended before the

effective date by publishing a subsequent document that will withdraw the final action for those permits that are the subject of adverse comments. All public comments received regarding those permits will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 12, 1996.

Final Action

EPA is approving one operating permit as RACT and eight operating permits to limit emissions at those subject sources to below major source emission levels.

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

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

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the VOC and NO_X RACT approval of one source and the synthetic minor permit conditions for eight additional sources, must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 24, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(104) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(104) Revisions to the Pennsylvania Regulations Chapter 129.91 submitted on August 1, 1995 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Two letters, one dated August 1, 1995, from James Seif, Secretary of the Pennsylvania Department of Environmental Protection, transmitting source-specific VOC and/or NO_X RACT determinations in the form of operating permits for the following sources: James River Corporation—Chambersburg (Franklin County)—printer. In addition, operating permits for the following sources containing provisions limiting these sources as ''synthetic minor'' sources (below RACT threshold level for VOC and/or NO_X emissions) are being approved: Appleton Papers, Inc. (Cumberland County)—carbon paper producer; Air Products & Chemicals, Inc.—Trexlortown (Lehigh County)—gas production/storage facility; Elf Atochem North America, Inc. (Montgomery County)—chemical research & development firm; York City Sewer Authority—Manchester Township (York County)—waste water treatment facility; Glasgow, Inc.—Ivy Rock Plants 1 & 2 (Montgomery County)—asphalt production facility; Glasgow, Inc.—Catanach Plant (Chester County)—asphalt production facility; Glasgow, Inc.—Freeborn Asphalt Plant (Delaware County)—asphalt production facility.

(B) One letter, dated November 15, 1995, from James Seif, Secretary of the Pennsylvania Department of Environmental Protection, transmitting source-specific VOC and/or NO_X RACT determinations in the form of operating permits including the following source: Glasgow, Inc.—Spring House Plants 1 & 2 (Montgomery County)—asphalt production facility;

(C) Operating permits (OP):

(*1*) James River Corporation—OP 28–2006, effective June 14, 1995, except the expiration date of the operating permit.

(*2*) Appleton Papers, Inc.—OP 21–2004, effective May 24, 1995, except the expiration date of the operating permit.

(*3*) Air Products and Chemicals, Inc.—OP 39–0008, effective May 25, 1995, except the expiration date of the operating permit.

(*4*) Elf Atochem North America, Inc.—OP 46–0022, effective June 27, 1995, except the expiration date of the operating permit.

(*5*) York City Sewer Authority, Manchester Township—OP 67–2013, effective March 1, 1995, except the expiration date of the operating permit.

(*6*) Glasgow, Inc., Ivy Rock Asphalt Plants 1 & 2—OP 46–0043, effective June 7, 1995, except for the expiration date of the operating permit.

(*7*) Glasgow, Inc., Spring House Asphalt Plants 1 & 2—OP 46–0029, effective June 7, 1995, except for the expiration date of the operating permit.

(*8*) Glasgow, Inc., Catanach Asphalt Plant—OP 15–0021, effective June 7, 1995, except for the expiration date of the operating permit.

(*9*) Glasgow, Inc., Freeborn Asphalt Plant—OP 23–0026, effective June 7, 1995, except for the expiration date of the operating permit.

[FR Doc. 96–2967 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI60–01–7136a; FRL–5324–5]

Approval and Promulgation of State Implementation Plan; Wisconsin; Autobody Refinishing SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on June 14, 1995. This revision requires the control of volatile organic compound (VOC) emissions from facilities that perform autobody refinishing operations. This regulation was submitted to generate reductions in VOC emissions, which the State will use to fulfill the 15 percent requirement of the amended Clean Air Act. In the proposed rules section of this Federal Register, the EPA is proposing approval of, and soliciting comments on, this requested SIP revision. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this Federal Register. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rule that has been incorporated by reference.

DATES: The ''direct final'' is effective on April 12, 1996, unless USEPA receives adverse or critical comments by March 13, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b) of the Clean Air Act, as amended on November 15, 1990, sets forth the requirements for ozone nonattainment areas which have been classified as moderate or above. Section 182(b)(1)(A) requires those States with ozone nonattainment areas classified as moderate or above to submit plans to reduce VOC emissions by at least 15 percent from the 1990 baseline emissions. The 1990 baseline, as described by EPA's emission inventory guidance, is the amount of anthropogenic VOC emissions emitted on a typical summer day. As a part of its 15 percent plan, the State of Wisconsin has developed and adopted a rule to reduce the VOC emissions from the autobody refinishing operations in those areas of the State that are classified as moderate or higher.

II. Evaluation of State Submittal

On June 14, 1995, Wisconsin submitted its 15 percent plan. Included in this plan was the autobody refinishing rule. The EPA found that the autobody refinishing portion of the 15 percent plan was complete in a letter to Donald Theiler, Director of the Wisconsin Department of Natural Resources' Bureau of Air Management, dated July 13, 1995. The WDNR followed the required legal procedures for adopting this rule which are prerequisites for EPA to consider including this rule in Wisconsin's federally enforceable SIP. Public hearings for this rule were held on December 20–21, 1994. This rule was submitted to the EPA as a SIP revision under signature of the Governor's designee.

In developing the control requirements for this source category, WDNR consulted the EPA's Alternative Control Techniques (ACT) document. The WDNR adopted the coating limits for VOC content in Option 1 of the control options found in the ACT. In addition to limiting the VOC content of the coatings used at autobody refinishing facilities, WDNR set standards for coating application equipment and equipment used for cleanup. These standards adopted in the State's rule are also consistent with the recommended requirements found in the ACT.

A more detailed analysis of the State's submittal is contained in a July 31, 1995 technical support document, which is available at the Regional Office listed above. In determining the approvability of this VOC rule, EPA evaluated the rule for consistency with Federal requirements, including section 110 and part D of the Clean Air Act.

III. Final Rulemaking Action

The EPA approves Wisconsin's autobody refinishing rule, thereby making this rule federally enforceable.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on April 12, 1996. However, if we receive adverse comments by March 13, 1996, EPA will publish a document that withdraws this action.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(83) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(83) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on June 14, 1995. This revision is a volatile organic compound (VOC) regulation which requires controls on facilities that perform autobody refinishing operations.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 422.02(intro.) and (47), 422.03 (1) and (3) and 484.05(1) as amended and published in the (Wisconsin) Register, August, 1995 and effective September 1, 1995.

(B) NR 422.02 (1), (1x), (3m), (12d), (33j), (34s), (34v), (37s), (42n), (47e) and (49m) and 422.095 as created and published in the (Wisconsin) Register, August, 1995 and effective September 1, 1995.

(C) NR 422.02(1s) as renumbered from 422.02(1) and published in the (Wisconsin) Register, August, 1995 and effective September 1, 1995.

[FR Doc. 96–2960 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI49–02–7293; FRL–5419–6]

Approval and Promulgation of Implementation Plan; Wisconsin; Correction

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule; correction.

SUMMARY: This document contains corrections to a final rule which was published Friday, July 28, 1995 (60 FR 38722). The final rule approved a volatile organic compound (VOC) regulation which was incorporated by reference into the Wisconsin State Implementation Plan (SIP).

EFFECTIVE DATE: This action is effective February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino at (312) 886–1767.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1995 (60 FR 38722), the USEPA approved a revision to the Wisconsin SIP containing a VOC regulation that establishes reasonably available control technology (RACT) for screen printing facilities. However, when these regulations were incorporated by reference into the Wisconsin SIP, USEPA inadvertantly overwrote a more current section of the rule which had previously been incorporated into the SIP.

Need for Correction

As published, the incorrect version of part of this regulation has been incorporated by reference into the State's SIP.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 24, 1996.

Valdas V. Adamkus,

Regional Administrator.

Correction of Publication

Accordingly, the direct final rule published on July 28, 1995 (60 FR 38722), is corrected as follows:

Subpart YY—Wisconsin

On page 38724, in the third column, paragraph 52.2570(c)(82)(i)(D) is corrected to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(82) * * *

(i) * * *

(D) NR 439.04(4)(intro.), (5)(a)1. and (5)(a)2. as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

* * * * *

[FR Doc. 96–2959 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 95–08]

Service Contract Filing Requirements—Miscellaneous Revisions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to provide for an optional, abbreviated service contract format; and to require service contracts to include the legal names and business addresses of the signatories and either list affiliates' business addresses or certify that affiliates' business addresses will be provided to the Commission within 10 business days of such request. The final rule in this matter should reduce duplication and Commission and carrier costs, as well as facilitate automation of the Commission's service contract records.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Maritime Commission (''Commission'') initiated this proceeding with a Notice of Proposed Rulemaking (''NPR'' or ''Proposed Rule'') published in the May 23, 1995 Federal Register.[1] The NPR solicited comments on a proposal to amend the Commission's rules to provide for an optional, abbreviated service contract format, on condition that such filings: (1) Incorporate by reference the corresponding electronic essential terms (''ET'') filed in the Commission's Automated Tariff Filing and Information System (''ATFI''); and (2) certify that, other than for those provisions set forth in the filed service contract, said ET sets forth the parties' true and complete contract. The NPR also proposed requiring contracts to set forth the true and complete names and addresses of contract parties, including affiliates, and the typewritten names, titles and addresses of the representatives signing contracts for the contract parties. The Proposed Rule's purposes are to reduce duplication and Commission and carrier costs, facilitate automation of the Commission's service contract records and facilitate the identification of shipper parties, including named affiliates to certain service contracts.

II. Comments

The NPR elicited three comments: (1) Joint comments of the Asia-North America Eastbound Rate Agreement, the Transpacific Westbound Rate Agreement, and the South Europe/American Conference (''ANERA, *et al.*''); (2) joint comments of the Trans-Pacific Conference of Japan and the Japan-Atlantic and Gulf Freight Conference and their member lines (''Japan Conferences''); and (3) the Trans-Atlantic Conference Agreement (''TACA''). The comments generally support the Proposed Rule, but suggest some modifications concerning the Proposed Rule's requirement for ''true and complete names, * * * and addresses'' of contract parties and information requirements for service contracts involving a significant number of shipper affiliates.

A. Abbreviated Service Contract Format

ANERA, *et al.*, and TACA support the proposed optional abbreviated service contract format, stating that it would reduce costs to them as well as the Commission.

The Japan Conferences do not oppose the abbreviated format, but advise that it might not enjoy widespread usage in their trades. They note that traditional Japanese contracting practices would result in Japanese shippers and most other commercial interests continuing to insist upon single, full-text format contracts instead of ''bifurcated'' versions that include the associated ET publications. They also advise that Japanese shippers, as well as most other commercial interests, have not yet adopted the practice of contracting via Electronic Data Interchange. They therefore urge that this format be ''optional'', as currently proposed.

The Japan Conferences also advise that problems could be associated with requiring contract signatories to certify that the terms set forth in the abbreviated format service contract and ATFI ETs are the true and complete terms covering all aspects of the parties' contract. They believe problems could occur when making certifications about frequently changing terms and conditions in instances where an inadvertent disparity arises between the true contract and the abbreviated version. They contend that the latter would be controlling under the rule but would not reflect the parties' true understanding.

B. Addresses of Contract Signatories

ANERA, *et al.*, support the NPR's proposal to require service contracts to state the contract parties' addresses. TACA opposes the Proposed Rule's use of the term ''true and complete'' with regard to contract parties' names and addresses,[2] because the term might have several meanings. TACA offers several examples in this regard: the name shown on a person's birth certificate; the name that a person commonly uses; the official legal name of a company or corporation shown on its certificate of incorporation; or a commonly used acronym, such as ''AT&T'', rather than ''American Telephone and Telegraph Company''. Further, it contends that a ''true and complete'' address could be the postal address of a person or company rather than the business address. TACA therefore believes that this aspect of the Proposed Rule invites uncertainty and confusion. Moreover, it contends that ocean common carrier service contract filers should be allowed to ''reasonably rely on the form, style, and completeness of the names of those persons executing such contracts on behalf of shipper parties as are provided them.'' As an alternative, TACA suggests that requiring a contract to state the ''names and postal addresses of contract parties and signers'' would be sufficient.[3] To this end, it offers the following revision to the first sentence of 46 CFR 514.7(h)(1)(v):

The names and postal addresses of the contract parties and the typewritten names and titles of the representatives signing the contract for the parties along with their postal address if different than that of the Contract party represented.

[1] 60 FR 27248.

[2] The NPR proposed requiring service contracts to include ''the true and complete names and addresses of the contract parties and the typewritten names, titles, and addresses of the representatives signing the contract for the parties.''

[3] TACA also believes that it is redundant to state the address of a ''contract signer'' when its address, in most cases, is the same as that of the contract party it represents. They believe that the revision which they suggest will also remedy this aspect of the Proposed Rule.

C. Addresses of Contract Parties' Affiliates

ANERA, *et al.*, support a requirement that a contract state the addresses of affiliates named in the contract, stating that this would make it easier for ANERA, *et al.*, and the Commission to enforce the terms of service contracts. However, they suggest that the requirements applying to shippers' association members and affiliates be modified to allow contract parties the following options: (1) Listing the addresses in the contract; or (2) certifying that the addresses have been provided to the carrier or conference to retain and to be made available upon request by the Commission. They believe that this would also achieve the NPR's goals, while allowing the industry flexibility to comply in the most efficient manner.

TACA opposes a requirement that service contracts include shippers' affiliates' addresses. It states that this requirement is ''contrary to the paramount purpose of this rulemaking proceeding * * * to reduce the 'sheer physical bulk' of confidential service contract material.'' As an alternative, TACA suggests that ''to meet the purpose regarding difficulty in identifying affiliates to certain contracts which have, in some cases, hampered the Commission's investigative efforts,'' the Proposed Rule be revised to provide that contract filers obtain and confidentially provide shipper party affiliate address information when requested by the Commission in its investigative efforts. TACA believes that such a modification would serve the Proposed Rule's purpose and ''eliminate its undesirable features''. It also states that ''to include relevant affiliate address information in * * * contracts will increase costs, delay the filing process and otherwise impede it.''

III. Discussion

The Commission has considered the comments in this matter and has decided to adopt a Final Rule that modifies the proposal to adopt the suggestion that the Final Rule require ''legal names and business addresses'', rather than ''true and complete names and addresses''. The Final Rule also moves the change proposed for section 514.7(h)(1)(vi) into section 514.7(h)(1)(v) and clarifies the Rule's application to previously-filed contracts amended after the Final Rule's effective date.

The Commission is adopting, without change, the Proposed Rule's amendment of 46 CFR 514.7(h)(2)(i)(A) to afford service contract parties the option of filing service contracts in abbreviated format, on condition that such filings incorporate by reference the corresponding ATFI ETs; and declare that, other than for those provisions set forth in the field service contract, said ET sets forth the parties' true and complete contract. The Final Rule also requires service contracts to set forth the contract parties' names and addresses. Carriers and conferences, like the Japan Conferences, which do not elect to file service contracts in abbreviated form may continue to file service contracts in full-text format, as at present.

TACA has raised questions regarding the ''true and complete'' aspect of a name or address, and occasional redundancy when the addresses of service contract parties and representatives signing the contract are the same, and has offered a modification to the rule to clarify it in this regard. The Final Rule modifies proposed 46 CFR 514.7(h)(1)(v) by deleting the term ''true and complete'' and substituting the requirement that the ''legal names and business addresses'' be set forth in the contract.[4]

While TACA is concerned that a requirement that names and addresses be ''true and complete'' would invite uncertainty and confusion regarding the term's meaning, the Commission believes that TACA's suggested revision to require the ''names and postal addresses'' of contract parties is not acceptable. However, to partially address TACA's concerns, the Final Rule herein clarifies that a contract is required to set forth the parties' ''legal names and business addresses'', as well as the legal names of affiliates of service contract parties entitled to access the contract.

The Commission has considered the comments by ANERA, *et al.*, regarding the NPR's proposal to amend 46 CFR 514.7(h)(1)(vi) with regard to names and addresses of service contract parties' affiliates, and TACA's observation concerning address information for service contracts involving significant numbers of affiliates. The Commission has determined to provide carriers/conferences the option of either (1) listing affiliates' business addresses in the service contract; or (2) certifying in the contract that this information will be provided to the Commission upon request within 10 business days of such request.

The collection of information requirements contained in this final rule were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. (OMB Control No. 3072–0055, expires May 31, 1998.) Public reporting burden for this collection of information will decrease to an average of one manhour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission amends Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraph (h)(1)(v) and adding paragraph (h)(2)(i)(C) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(h) * * *

(1) * * *

(v) The typewritten legal names and business addresses of the contract parties; the typewritten legal names of affiliates entitled to access the contract; and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Carriers and/or conferences which enter into contracts which include affiliates must in each instance either:

[4] A business address need not be repeated in instances where the business address of the person signing the contract is the same as the business address of a contract party.

(A) list the affiliates' business addresses; or

(B) certify that this information will be provided to the Commission upon request within 10 business days of such request (These requirements will apply to previously-filed contracts amended after March 13, 1996). However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates. subsequent references in the contract to the contract parties shall be consistent with the first reference (*e.g.*, (exact name), ''carriers,'' ''shipper,'' or ''association,'' etc.); and

* * * * *

(2) * * *

(i) * * *

(C) Section 514.7(h)(2)(i)(A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the true and complete contract.[1]

3. Exhibit II is added to Part 514, reading as follows:

BILLING CODE 6730–01–M

[1] See Exhibit II of this part for an example of an abbreviated format service contract.

EXHIBIT II TO PART 514

SAMPLE ABBREVIATED FORMAT SERVICE CONTRACT

Service Contract No.: SC 1-95 FMC File No.: 50,000

Essentials Terms No.: ET 1-95 Amendment No.: _____
Service Contract Essential Terms Publication No.: 003
Tariff(s) of General Applicability No.: 001, 002

CARRIER/CONFERENCE NAME: **EFFICIENT LINER TRANSPORTATION, INC.**
Carrier/Conference Address: 1227 Seaway Drive
Washington, DC 20573

AND

SHIPPER NAME: **ABC ELECTRONICS COMPANY**
Shipper Address: 7221 Happiness Lane
New York, NY 10001

This is a service contract pursuant to the Shipping Act of 1984 (46 U.S.C. app. 1701 et al.) and FMC rules at 46 C.F.R. 514, between "CARRIER/CONFERENCE" and "SHIPPER" parties named herein. The contract parties declare that the terms set forth herein and the essential terms as published in Carrier/Conference Service Contract Essential Terms Tariff No. 003, ET No. 1-95, in the Federal Maritime Commission's Automated Tariff Filing and Information System, constitute the true and complete copy of all aspects of the essential terms of this contract and are hereby incorporated by reference.

Further, shipper party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es):

NVOCC ____
SHIPPERS' ASSOCIATION ____
OWNER OF CARGO ____
OTHER (Please specify)____

Records maintained to support shipments under this service contract are: bills of lading, shipping manifests, and other related written correspondence between contract parties.

Contact person for records in the event of a request by the Federal Maritime Commission:

Efficient Liner Transportation , Inc.
Traffic Manager
1227 Seaway Drive
Washington, DC 20573
(202) 523-5856

_____Date_____ _____Date____
(Carrier/Conference Signature) (Shipper Signature)
Carl T. Booker, President Vanessa M. Banks, President
Efficient Liner Transportation, Inc. ABC Electronics Company

Affiliate of shipper: Quality Compact Discs, Inc.
Affiliate's address: 7221-B Happiness Lane
New York, NY 10001

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–2946 Filed 2–9–96; 8:45 am]

BILLING CODE 6730–01–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837 and 1852

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as promotion of compliance with current Federal-wide policies on Government property, revision of headings, and delegation of authority.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Section 1837.204 is added to delegate authority to make the determinations of non-availability of personnel under FAR 37.204 (FAC 90–33, Item II, 60 FR 49720 and 49723, 9–26–95). In addition, section 1815.413–2 is revised, in the context of FAR 37.203 and 37.204, to refer to the determinations to be made under the new section 1837.204.

To promote compliance with Federal-wide policy, a reference is added in 1815.970(b) to the policy under FAR 45.302–3(c) on excluding the cost of facilities when contracting officers calculate a profit or fee objective prior to contract negotiation.

The prescription is revised in 1815.7002 for the ombudsman clause in order to remove the reference to Section L of the solicitation. NASA will instruct contracting officers to place the clause in Section I which is more appropriate for information that may be useful before *and after* contract award.

Section 1816.505 is added (per FAC 90–33, Item III, 60 FR 49723, 9–26–95) on task and delivery order contracts in order to enable persons to identify the appropriate NASA ombudsman.

In order to conform to changes in the FAR made by FAC 90–32, Item V (60 FR 48206, 9–18–95) headings are changed in part 1819.

This rule increases from $25,000 to the ''simplified acquisition threshold'' the dollar amount at which the Safety and Health clause of 1852.223–70 is automatically included in construction contracts and subcontracts. Regardless of dollar amount, the clause is included when there are known hazards.

This rule removes paragraph (b) of 1835.003 which refers to a NASA Management Instruction entitled ''Recoupment Policy for the Sale, Use, Lease, or Other Transfer of NASA-Developed Technologies.'' The NASA Management Instruction has been canceled because we know of no occasion where the policy has been used by NASA to recoup R&D or other nonrecurring costs.

Section 1852.227–15 is redesignated as 1852.227–17 because the section provides a paragraph to be added to the basic clause at FAR 52.227–17.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public under the Paperwork Reduction Act of 1995, as implemented under 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815–413–2 is revised to read as follows:

1815.413–2 Alternate II.

(a) *General.* This section prescribes the policy and procedures pertaining to the use of individuals from outside the Government as evaluators of proposals. The references in FAR 15.413–2 to the provision at FAR 52.215–12 shall be considered to be references to the provision at 48 CFR 1852.215–72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available. Qualified proposal evaluators will normally be available from within the Government. However, from time-to-time it may be necessary to make a determination of non-availability of qualified Government evaluators as required by 48 CFR 1837.204 and to disclose proposal information to non-Government evaluators.

(c) *Approval to release proposal outside the Government.* (1) Regarding proposals and proposal information resulting from Requests For Proposals, after the determination of non-availability is made (48 CFR 1837.204) and a copy of the determination is included in the procurement file, the Procurement Officer, with the concurrence of the Chief Counsel, may authorize the release of the proposals and proposal information to non-Government evaluators. Under FAR 37.203(d), the determination of non-availability of qualified personnel need not be made when the proposal information is released to a JPL employee for evaluation.

(2) Information from SBIR, STTR, NRA, AO and unsolicited proposals may be authorized for disclosure to non-Government evaluators by the NASA program official one level higher than the official responsible for the evaluation without making the determination of non-availability as required by 48 CFR 1837.204.

(d) *Appointing non-Government evaluators as special Government employees.* (1) Except for JPL employees, evaluators of proposal information resulting from an RFP shall be appointed as special Government employees.

(2) Appointment as a Special Government employee is a separate action from the approval required by paragraph (c) of this section and may be processed concurrently. Appointment as a special Government employee shall be made by:

(i) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(ii) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(3) Non-Government evaluators need not be appointed as special Government employees when they evaluate information from SBIR, STTR, NRA, AO, and unsolicited proposals.

(e) *Release of proposal information.* The written approvals required by paragraphs (c)(1) and (c)(2) of this section shall be provided to the contracting officer before the actual release of the proposal information. As a minimum, the approval shall:

(1) Identify the precise proposal information being released;

(2) Identify the person receiving the proposal information and include a statement that the person has been appointed a special Government employee or a statement of the applicable exception under paragraph (d)(3) of this section;

(3) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(4) Provide a statement that a signed ''Agreement and Conditions for Evaluation of Proposals (August 1993),'' in accordance with paragraph (f) of this section, will be obtained prior to the proposal to the evaluator.

(f) *Agreements.* For any proposal information, (i.e., RFP, SBIR, STTR, NRA, AO and unsolicited proposals) the NASA official who actually releases/transfers the proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following ''Agreement and Conditions for Evaluation of Proposals (April 1993),'' and to complete and sign a ''Procurement Integrity Certification for Procurement Officials'' (Optional Form 333), in accordance with FAR 3.104–12.

Agreement and Conditions for Evaluation of Proposals (August 1993)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413–2(e) and NFS 1815.413(a)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

(6) I understand that the term ''leave the Government'' in the last sentence of the Procurement Integrity Certification for Procurement Officials, Optional Form 333, means ''cease to function as a procurement official.''

Signature: _____

Name typed or printed: _____

Date: _____

[End of Agreement]

(g) *Affixing of a protection notice.* The official who actually releases/transfers the proposal information shall review each proposal or the extracted item of proposal information that is to be released and ensure that the notice at FAR 15.413–2(e) (See 48 CFR 1815.413(a)) is affixed to each proposal or the extracted item of proposal information before it is released/transferred.

(h) *JPL.* If JPL personnel, in evaluating proposal information obtained from a standard RFP released to them by NASA, must obtain assistance from non-JPL, non-Government evaluators, JPL must obtain written approval from the Procurement Officer before releasing the information; except that information from SBIR, STTR, NRA, AO, and unsolicited proposals may be disclosed outside JPL with prior written approval, in compliance with paragraph (c)(2) of this section.

3. The last sentence of paragraph (b) of 1815.970 is revised to read as follows:

1815.970 NASA structured approach for profit or fee objective.

(a) * * *

(b) * * * Neither the cost of facilities (see FAR 45.302–3(c)) nor the amount calculated for the cost of money for facilities capital is to be included as part of the cost base in column 1.(a) in the computation of profit.

* * * * *

4. The last sentence of 1815.7002 is revised to read as follows:

1815.7002 Commerce Business Daily announcements, solicitations and contracts.

* * * Also, a clause substantially the same as the one at 48 CFR 1852.215–84 shall be included in solicitations, including draft solicitations, and in all contracts.

PART 1816—TYPES OF CONTRACTS

5. Section 1816.505 is added to read as follows:

1816.505 Ordering.

The ombudsman referred to in FAR 16.505(b)(4) is the ombudsman of the installation issuing the solicitation and its resultant contract. See 48 CFR part 1815, subparts 1815.70 and 1852.215–84.

6. The headings for part 1819, section 1819.505, and subpart 1819.7 are revised to read as follows:

PART 1819—SMALL BUSINESS PROGRAMS

1819.505 Rejecting Small Business Administration recommendations.

Subpart 1819.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

7. Section 1823.7004 is amended by republishing paragraph (c) introductory text and revising paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

1823.7004 Contract clause.

* * * * *

(c) Except as provided in paragraph (d) of this section, the clause at 48 CFR 1852.223–70 shall be included in—

(1) * * *

(2) All construction, repair, or alteration contracts in excess of the simplified acquisition threshold;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Any procurement regardless of dollar amount when—

(i) Any deliverable contract end item is of a hazardous nature, or

(ii) During the life of the contract it can reasonably be expected that hazards will be generated within the operational environment and the contracting officer or safety and health representative determines that they warrant inclusion of the clause.

* * * * *

PART 1827—PATENTS, DATA, AND COPYRIGHTS

8. Paragraph (c) of 1827.405 is revised to read as follows:

1827.405 Other data rights provisions.

* * * * *

(c) *Production of special works.* Paragraph (f) of the clause at 48 CFR 1852.227–17 is to be added to the clause at FAR 52.227–17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

9. Section 1835.003 is revised to read as follows:

1835.003 Policy.

See NHB 5800.1, NASA Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

PART 1837—SERVICE CONTRACTING

10. Section 1837.204 is added to read as follows:

1837.204 Guidelines for determining availability of personnel.

(a) The NASA official one level above the NASA program official responsible for the evaluation shall make the determination of non-availability of personnel under FAR 37.204 (a) and (b). For field installations, the concurrence of the Office of Chief Counsel shall be obtained and for Headquarters actions, the concurrence of the Office of Associate General Counsel for Contracts shall be obtained. The contracting officer shall ensure that a copy of the determination is in the procurement file prior to issuance of a solicitation.

(b) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination required by FAR 37.204.

(c) The agreement required by FAR 37.204(c) shall be made by the program official responsible for the evaluation and the contracting officer.

(d) Class determinations under FAR 37.204(e) shall be made by the Associate Administrator for Procurement. The installation procurement office shall forward its request with an explanation of the necessity for the use of outside evaluators as outlined in FAR 37.204(b) to Code HS.

(e) See (NFS) 48 CFR 1815.413–2 Alternate II, for instructions concerning—

(1) The authority to release proposals resulting from RFP's outside the Government and

(2) The requisite nondisclosure statements.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 1852.223–70 is amended by revising the date of the clause to read ''(February 1996)'' and revising paragraph (e)(2) of the clause to read as follows:

1852.223–70 Safety and Health.

* * * * *

(e) * * *

(1) * * *

(2) require construction, repair, or alteration in excess of the simplified acquisition threshold, or

* * * * *

1852.227–15 [Redesignated as 1852.227–17]

12. Section 1852.227–15 is redesignated as 1852.227–17.

[FR Doc. 96–3003 Filed 2–9–96; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 61, No. 29
Monday, February 12, 1996

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AE46

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22 & 23), Dark Air-Cured (Types 35 & 36), Virginia Sun-Cured (Type 37), Cigar Filler (Type 46), and Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary), is required to proclaim by March 1, 1996, national marketing quotas for cigar filler (type 46) and cigar filler and cigar binder (types 42–44; 53–55) tobaccos for the 1996–97, 1997–98, and 1998–99, marketing years (MY's) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) kinds of tobacco for the 1996–97 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco and other related matters which are discussed in this proposed rule.

DATES: Comments must be received on or before February 16, 1996, in order to be assured consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), room 5750 South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 am to 4:45 pm, Monday through Friday, except holidays, in room 5750 South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, FSA, USDA, room 5750 South Building, P.O. Box 2415, Washington, DC 20013–2415, on 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loans and Purchases—10.051.

Executve Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since FSA is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR part 723 set forth in this proposed rule do not contain any information collection requirements that require clearance through the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

Discussion

The proposed rule would amend 7 CFR part 723 to set forth the 1996-crop marketing quotas for these six kinds of tobacco.

Section 312(b) of the Agricultural Adjustment Act of 1938, as amended (the Act), provides that the Secretary shall determine and announce, not later than March 1, 1996, with respect to kinds of tobacco specified in this proposed rule, the amount of the national marketing quota which will be in effect by MY 1996 in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

Section 312(c) of the Act provides that, within 30 days after proclamation of national marketing quotas for cigar filler (type 46) and cigar filler and cigar binder (types 42–44 & 53–55) tobaccos, the Secretary conduct referenda of farmers engaged in the 1995 production of each kind of tobacco (1988 in the case of type 46) to determine whether they favor or oppose marketing quotas for MY's 1996, 1997, and 1998. These referenda are required because MY 1995 is the last year of the three consecutive MYs for which marketing quotas previously proclaimed will be in effect.

The Secretary shall proclaim the results of any referendum. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quota, the national marketing quota previously proclaimed shall not become effective. The referendum results shall in no way affect or limit any subsequent quota proclamation and submission to a future referendum as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments, through the national factor. The national factor is determined by dividing the preliminary quota (the sum of quotas for old farms) into the quota determined for the MY in question (less the reserve).

Procedures will continue unchanged for (1) converting marketing quotas into acreage allotments; (2) apportioning allotments among old farms; (3) apportioning reserves for use in (a) establishing allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments; and (4) holding referenda.

Request for Comments

This rule proposes to amend 7 CFR part 723, subpart A to include 1996-crop national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), cigar-filler (type 46), and cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos. These six kinds of tobacco account for about 4 percent of total U.S. tobacco production.

Accordingly, comments are requested concerning the establishment of the national marketing quotas for the following:

(1) Fire-Cured (Type 21) Tobacco

The 1996-crop national marketing quota for fire-cured (type 21) tobacco will range from 1.8 to 2.0 million pounds. This range reflects the assumption that the national acreage factor will range from 0.9 to 1.0.

(2) Fire-Cured (Types 22 & 23) Tobacco

The 1996-crop national marketing quota for fire-cured (types 22 & 23) tobacco will range from 32.0 to 40.0 million pounds. This range reflects the assumption that the national acreage factor will range from 0.8 to 1.0.

(3) Dark Air-Cured (Types 35 & 36) Tobacco

The 1996-crop national marketing quota for dark air-cured (types 35 & 36) tobacco will range from 7.5 to 9.5 million pounds. This range reflects the assumption that the national acreage factor will range from 0.8 to 1.0.

(4) Virginia Sun-Cured (Type 37) Tobacco

The 1996-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 90,000 to 100,000 pounds. This range reflects the assumption that the national acreage factor will range from 0.9 to 1.0.

(5) Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

The 1996-crop national marketing quota for cigar-filler and cigar-binder (types 42–44 & 53–55) tobaccos will range from 7.5 to 9.0 million pounds. This range reflects the assumption that the national acreage factor will range from 0.85 to 1.0.

(6) Cigar-Filler (type 46) Tobacco

The 1996-crop national marketing quota for cigar-filler (Type 46) tobacco will be zero.

List of Subjects in 7 CFR Part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723, subpart A be amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (d) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(d) The 1996-crop national marketing quota will range from 1.8 million pounds to 2.0 million pounds.

3. Section 723.114 is amended by adding paragraph (d) to read as follows:

§ 723.114 Fire-cured (types 22 & 23) tobacco.

* * * * *

(d) The 1996-crop national marketing quota will range from 32.0 million pounds to 40.0 million pounds

4. Section 723.115 is amended by adding paragraph (d) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(d) The 1996-crop national marketing quota will range from 8.5 million pounds to 9.5 million pounds.

5. Section 723.116 is amended by adding paragraph (d) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(d) The 1996-crop national marketing quota will range from 90,000 to 100,000 pounds.

6. Section 723.117 is amended by adding paragraph (d) to read as follows:

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(d) The 1996-crop national marketing quota will range from 7.5 million pounds to 9.0 million pounds.

7. Section 723.118 is amended by adding paragraph (d) to read as follows:

§ 723.118 Cigar-filler (type 46) tobacco.

* * * * *

(d) The 1996-crop national marketing quota is 0.0 pounds.

Signed at Washington, DC, February 2, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–2929 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–05–P–M

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AE41

Tobacco—Tobacco Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule clarifies the regulations for price support loans for tobacco to specify that a refund will be due on ''nested'' tobacco whether or not the producer knew the tobacco was nested. This modification is intended to insure that producers take responsibility for, and are the insurers of, the quality of the tobacco placed for price support and that price support is limited to normal, non-adulterated lots based on true weights.

DATES: Comments must be received on or before April 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA) AG Code 0514, P.O. Box 2415, Washington, DC 20013–2415, telephone (202) 720–7413. All written comments will be available for public inspection in room 5750 South Building, USDA, 14th Street and Independence Avenue, SW, Washington, DC, between 8 am and 5 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: David W. Anderson, Assistant to the Director, Tobacco and Peanuts Division, FSA, at the address listed above, telephone (202) 690–2518.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is

not required by 5 USC 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor environment statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, subpart V published at 48 FR 2915 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this proposed rule. Before any legal action is brought regarding determinations made under provision of 7 CFR Part 1464, the administrative appeal provisions set forth at 7 CFR Part 780 must be exhausted.

Paperwork Reduction Act

This proposed rule does not change the information collection requirements that have been approved by OMB and assigned control number 0560–0058.

Background

Nested tobacco is tobacco in a lot containing a ''nest'' of inferior tobacco or foreign material, presumably, to increase the payment of loan weight of the lot. A formal definition of nesting is found in regulations codified at 7 CFR Part 29 and that definition is incorporated in the rules for the tobacco price support program found at 7 CFR Part 1464.

In some cases, the nesting may not be discovered until later in processing, well after a price support loan for the tobacco has been disbursed. Under current tobacco program rules n 7 CFR Part 1464.7 through 9, a producer found to have ''knowingly'' presented nested tobacco (i) must refund the price support loan amount for the individual lot and (ii) will be declared to be ineligible for any other tobacco price support for that year.

Because of the severity of the consequences, there is sometimes a reluctance to make a finding that the violation was knowing and producers will sometimes contend that the nesting was the act of irresponsible employees or other handlers of tobacco. However, there is no apparent reason why a refund should not be demanded for a loan made on any adulterated (nested) lot whether it was, as to producer, ''knowingly'' nested or not. It must be the responsibility of the producer to present eligible tobacco. Nesting produces false weights, and processing problems, and by producing undue loan disbursements can cause losses that ultimately are born by the tobacco producer because of the ''no net-cost'' nature of the tobacco program.

The proposed rule would make explicit that a refund wi8ll be due from the loan recipient on the individual nested lot in all cases of nesting (''knowing'' or not). However, the rules would allow the Farm Service Agency (FSA) county committee, with the concurrence of the FSA State committee, to reduce the amount of the refund demanded, in accordance with guidelines of the FSA Deputy Administrator for Farm Programs. This allowance will permit adjustments to avoid undue hardships to producers.

This rule would not adjust the terms under which a producer can lose eligibility for the entire crop year, for all lots, as a result of a nesting violation. For that, a ''knowing'' violation will still be required. The proposed rule is, instead, addressed to the accounting for the individual lot that is actually nested. This result would be accomplished by modifying Part 1464.8 to make more explicit that nested tobacco is *per se* ineligible for price support. Also, Part 1464.9 would be amended to remove the reference to ''knowing'' violations with regard to demands for refunds on individual lots.

Comments on this proposed rule are welcomed and should be submitted by the date indicated in this notice.

List of Subjects in 7 CFR Part 1464

Agriculture, Assessments, Loan program, Price support program, Tobacco, Warehouses.

Accordingly, it is proposed that 7 CFR Part 1464 be amended as follows:

PART 1464—TOBACCO

1. The authority citation for part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

2. Section 1464.8 is amended by revising the introductory text to read as follows:

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in § 1464.2, that is in sound and merchantable condition, is not nested as defined in 7 CFR Part 29, and:

* * * * *

3. Section 1464.9 is amended by revising paragraph (a) to read as follows:

§ 1464.9 Refund of price support advance.

* * * * *

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State committee representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator for Farm Programs.

* * * * *

Signed at Washington, D.C., on February 5, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–2927 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF33

Reporting Reliability and Availability Information for Risk-significant Systems and Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require that licensees for commercial nuclear power reactors report plant-specific summary reliability and availability data for risk-significant systems and equipment [1] to

[1] In relation to this proposed rule, the term equipment is intended to apply to an ensemble of components treated as a single entity for certain probabilistic risk assessments (PRAs) where a system or train treatment would not be appropriate.

the NRC. The proposed rule would also require licensees to maintain on site, and to make available for NRC inspection, records and documentation that provide the basis for the summary data reported to the NRC. The systems and equipment for which data would be provided are a subset of the systems and equipment within the scope of the maintenance rule.

The Commission has determined that reporting of reliability and availability information is necessary to substantially improve the NRC's ability to make risk-effective regulatory decisions consistent with the Commission's policy statement on the use of probabilistic risk assessments (PRAs) (August 16, 1995; 60 FR 42622). This would assist the NRC in improving its oversight capabilities with respect to public health and safety and becoming more efficient by focusing its regulatory program on those issues of greatest risk significance and reducing unnecessary regulatory burdens on licensees. The Commission would use the data that would be required by the proposed rule in generic issue resolution, developing quantitative indicators that can assist in assessing plant safety performance, performing risk-based inspections, and pursuing modifications to specific plants and basic regulations and guidelines. Furthermore, this information would improve the NRC's oversight of licensees' implementation of the maintenance rule. It would also enhance licensees' capabilities to implement the evaluation and goal-setting activities required by the maintenance rule by providing licensees with access to current industry-wide reliability and availability information for some of the systems and equipment within the scope of the maintenance rule.

DATES: Comments regarding any aspect of the proposed rule are due to the Commission by June 11, 1996. Comments received after that date will be considered if it is practical to do so, but the Commission can give no assurance of consideration for late comments. The Commission intends that this expiration date will be at least 30 days after publication of an associated draft regulatory guide for public comment.

In addition, comments regarding the collection of information, including the burden estimate and suggestions for reducing the burden, should be submitted to the Office of Management and Budget (OMB), and to the NRC, by March 13, 1996. For further information see the discussion below under the heading *Paperwork Reduction Act Statement.*

ADDRESSES: Mail written comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN.: Docketing and Service Branch. Deliver written comments to the NRC at One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

Send comments regarding the collection of information, including the burden estimate and suggestions for reducing the burden, to: (1) Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503, and (2) Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. For further information see the discussion below under the heading *Paperwork Reduction Act Statement.*

Copies of the draft regulatory analysis, the supporting statement submitted to the OMB, and comments received may be examined, and/or copied for a fee, at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–6835.

SUPPLEMENTARY INFORMATION:

Background

Current Requirements

There are no existing requirements to systematically report reliability and availability information; nor is there an industry-wide database to provide such information.

Current reporting requirements in 10 CFR 50.72, ''Immediate notification'' and 10 CFR 50.73, ''Licensee event report system,'' require the submittal of extensive descriptive information on selected plant and system level events. The Nuclear Plant Reliability Data System, a data base that industry supports and the Institute for Nuclear Power Operations (INPO) maintains, provides data on component engineering characteristics and failures. Neither of these sources includes all the data elements (i.e., number of demands on a system, number of hours of operation, and information on maintenance unavailability) that are needed to determine the reliability and availability of systems and equipment. Maintenance effectiveness monitoring requirements in 10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants'', also do not contain reporting requirements.

In recent years, plants have performed Individual Plant Evaluations (IPEs), as requested in Generic Letter 88–20 and its supplements, and submitted the results to the NRC. These submittals provide measures of risk such as core damage frequency, dominant accident sequences, and containment release category information. While system and component reliability data have been collected as part of some utility IPEs, this information is typically not included in the IPE submittals to the NRC.

Prior Efforts

In late 1991 and through 1992, the NRC staff participated on an INPO-established NRC/industry review group to make recommendations for changes to the Nuclear Plant Reliability Data System (NPRDS). The group's final recommendations to INPO to collect PRA-related reliability and availability data would have provided most of NRC's data needs. However, INPO took no action on these recommendations.

During 1992 and 1993, the NRC staff continued through correspondence and meetings to outline the particular data needed and to seek INPO's assistance in obtaining the data. In a December 1993 meeting with NUMARC (now the Nuclear Energy Institute (NEI)), INPO representatives suggested their Safety System Performance Indicator (SSPI) as a surrogate for reliability data. They proposed expanding the indicator to additional systems and indicated that data elements could be modified to compute actual reliability and availability data. Although general agreements were reached with INPO on which systems and components and what types of data elements are appropriate for risk-related applications and maintenance effectiveness monitoring, no voluntary system of providing data resulted from these discussions. In the fall of 1994, the NRC staff began work on this rulemaking action. In June 1995, NEI proposed to discuss a voluntary approach of providing reliability and availability data to the NRC based on SSPI data. The NRC staff will continue to work with industry on voluntary submittal of reliability data, under a program that will meet the needs of all parties, while at the same time proceeding to obtain public comment on this proposed rule.

Industry representatives have expressed concern that reliability data, if publicly available, would be subject to

misuse. In certain circumstances it is permissible for the NRC to withhold information from public disclosure. For example, pursuant to 10 CFR 2.790(b)(1), a licensee may propose that a document be withheld from public disclosure on the grounds that it contains trade secrets or privileged or confidential commercial or financial information. However, the data that would be reported under this proposed rule would not appear to qualify for withholding. Reliability data used as input to risk-based regulatory decisions should be scrutable and accessible to the public. The Commission's PRA policy statement indicates that appropriate supporting data for PRA analyses that support regulatory decisions should be publicly available. Similarly, the Commission's draft report on public responsiveness (March 31, 1995; 60 FR 16685) indicates that the policy of the NRC is to make information available to the public relating to its health and safety mission, consistent with its legal obligations to protect information and its deliberative and investigative processes. Commenters who believe that there is information subject to a proper 10 CFR 2.790(b)(1) withholding determination requested by the proposed rule should provide a specific justification for such belief.

Move to Risk-Based Regulation

For several years the Commission has been working towards increased use of PRAs in power reactor regulation. In its policy statement on the use of PRAs, the Commission has indicated that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in terms of methods and data, and this implies that the collection of equipment and human reliability data should be enhanced. Implementation of these policies would improve the regulatory process through (1) improved risk-effective safety decision making, (2) more efficient use of agency resources, and (3) reduction in unnecessary burdens on licensees. These improvements would enhance both efficiency and safety.

The data reported under this proposed rule would improve the NRC's oversight capability with respect to public health and safety by focusing the NRC's regulatory programs in a risk-effective manner. Generally, the NRC's ability to identify plants and systems at increased risk for significant events and, thus, to take appropriate action would be substantially improved. For example, a generic indication of low reliability or availability for a system might indicate a technical problem, with its attendant risk, that may warrant generic action. Similarly, a plant-specific indication of low reliability or availability for several systems might indicate a programmatic problem, with its attendant risk, and may warrant plant-specific action.

It has been noted that prior to some significant events (such as the scram failure at Salem and the accident at Three Mile Island) there was previously existing information (such as challenge data and reliability data for scram breakers and power operated relief valves) which, if collected, recognized, and acted upon might have led to preventive actions. Accordingly, it is expected that reliability and availability information for selected risk-significant systems would improve the NRC's oversight capability with respect to public health and safety—i.e., the ability to maintain or enhance safety by identifying and reviewing indications of increased risk and, if appropriate, taking generic or plant-specific action.

Such problems could be subtle in nature. For instance, licensee(s) might schedule train outages for maintenance at certain times, such that risks are substantially increased over what would be expected based on random outages. This situation would not be indicated by current reporting requirements, or even by simply reporting train unavailability, but it could be indicated by the concurrent unavailability of two or more trains, as would be reported under the proposed rule. Additional examples discussed below describe further specific uses of the data that would help to enhance safety.

In order to move towards risk-based regulation and the increased use of PRA information, the NRC needs scrutable, plant-specific and generic reliability and availability information. The framework for an overall move towards risk-based regulation involves the development of a regulatory process. This process includes operational procedures and decision criteria that require credible PRA methods, models, and data. This framework would provide for predictable, consistent, and objective risk-based regulatory decision making. The data that would be reported under this rule represent one of the needed elements. In addition, these data are needed to improve the efficiency and effectiveness of NRC regulatory applications that employ a risk-based perspective in advance of defining the entire framework.

Generally, plant-specific information is needed because there can be wide plant-to-plant variations in the design, importance, reliability and availability of particular systems and equipment. It is necessary to identify similar equipment in various plants so that the data can be properly grouped and analyzed to estimate overall industry performance and plant-specific performance and to identify outliers (good or bad).[2]

Some examples of how reliability and availability information would be used to improve current NRC regulatory applications that consider risk in the decision process are discussed below. One of the examples involves the need for information to support generic regulatory actions—i.e., generic issue resolution and its associated rulemaking or regulatory guide revision. Another example involves the need for information to determine whether further NRC action is needed at specific plants—i.e., indicators of plant performance. Some involve a mixture of plant specific and generic elements. For example, analyzing an event at a given plant could lead to a plant-specific action such as a special inspection and/or to a generic action such as a bulletin or generic letter.

Generic Issue Resolution

The NRC currently uses risk estimates in: (1) prioritizing safety issues, (2) deciding whether new requirements or staff positions to address these issues are warranted, and (3) deciding whether proposed new requirements or staff positions should be implemented. Knowing the current, updated reliability and availability of key systems would, in some cases, lead to a better understanding of the risk in these areas and, thus, to more risk-effective decisions. This should both enhance public protection and reduce unnecessary regulatory burdens. Generic data would usually suffice for this purpose; however, in some cases the data would need to be divided to account for specific classes or groups of plants.

Indicators of Plant Performance

PRA models with plant-specific reliability and availability data would be used to develop indicators of plant performance and trends in plant performance which are more closely related to risk than those currently in use. These new indicators would replace some of those currently in use

[2] For many of the systems involved, plant specific demand and failure data will be sparse, at least initially. Until data have been collected for some time, it will be necessary to use data from similar equipment, applications, and environments at several plants in order to obtain practical estimates of reliability and uncertainty. Even when sufficient plant-specific data exist to estimate plant performance, comparison to industry or group averages is often desirable.

and thereby enhance NRC's ability to make risk-effective decisions with regard to identifying plants for increased or decreased regulatory attention. For example, it is important to detect situations where an individual plant may be having reliability or availability problems with multiple systems.

Accident Sequence Precursor (ASP) and Event Analysis

Plant-specific, train-level reliability and unavailability data would be used to improve the plant-specific ASP models which the NRC uses to compute conditional core damage probability for determining the risk-significance of operational events. In addition, dates and causes of equipment failures would be used to identify common cause failures and to compute common cause failure rates for input to these models. Improving these methods would enhance the staff's ability to make risk-effective decisions about which events warrant further inspections or investigations and/or generic actions such as bulletins and generic letters. Plant-specific data are needed to better understand an event and calculate the associated conditional core damage probability. It is also useful to identify systems that have the most influence on the results. Then the risk associated with the potential for similar events at other plants, which may be known to have low reliability for the key systems, can be considered in determining whether further actions are warranted.

Risk-Based Inspections

Current and updated system reliability, availability and failure data in a generic and plant-specific risk-based context would be used to enhance the staff's ability to plan inspections focused on the most risk-significant plant systems, components, and operations. While generic data would be used in developing risk-based inspection guides and a framework for inspections, plant-specific data would be used to focus and optimize inspection activities at specific plants. For example, an individual plant may have an atypical reliability problem with a specific risk-significant system and thereby warrant additional attention. In addition, special studies can be conducted to determine the root cause of reliability problems by comparing the characteristics of plants that have these problems with those that do not.

Aging

Equipment reliability data would help identify equipment that is being degraded by aging and define the extent and the risk-significance of aging problems.

Another class of examples involves the need for information to evaluate anticipated cost beneficial licensing actions, where the rationale is that risk permits reductions in previous margins of safety or less prescriptive requirements without adverse impact on overall safety. The NRC is actively pursuing a variety of modifications to the basic regulations and guidelines that govern the operation of commercial nuclear power reactors. These modifications are characterized by allowing individual licensees to utilize insights from plant-specific risk evaluations to reduce or remove current requirements that are found to have low risk-significance. Current regulatory requirements under consideration for risk-based modification include those prescribing quality assurance, in-service inspection, in-service testing, and surveillance testing. It is anticipated that a significant number of additional requests will be received that rely upon risk-based arguments. These changes could adversely affect the level of safety achieved by the plants if the risk evaluations are flawed or the changes are improperly executed or the changes involve synergistic effects that are not covered by the risk models or captured by historical data. Current, plant-specific reliability and availability data would help the NRC monitor the licensees' programs to maintain safety while reducing regulatory burdens. Relaxation of undue regulatory burdens then can proceed with confidence that there will be appropriate feedback to assure that the level of safety is not being degraded. Some examples are discussed below.

Risk-Based Technical Specification

Technical Specification requirements specify surveillance intervals and allowed outage times for safety equipment for the various modes of plant operation. It is anticipated that licensees will request a number of relaxations in surveillance intervals and allowed outage times. Current, plant-specific reliability and availability data would help the NRC monitor performance for the systems and equipment subject to the proposed rule. Thus, proposed relaxations of surveillance intervals and allowed outage times for such systems could be evaluated more effectively based on past performance and on confidence that there would be appropriate feedback to ensure that performance is not being degraded. In addition, failure rates from actual demands will be used to verify that failure rates estimated from testing are approximately the same.

Inservice Testing

Inservice testing requirements, which are based on the provisions of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), measure the functional characteristics of equipment performance, such as pump flow, in order to detect degradation. The ASME and licensee owners' groups are working toward establishing risk-based frequencies for inservice testing, based on plant-specific risk ranking methodologies. Changes in testing frequency can affect reliability in many ways. For example, less frequent valve testing might lead to an increase in the demand failure rate because the valve actuating mechanism tends to bind or freeze after extended periods of idleness. However, using plant-specific demand failure and unavailability data, proposed changes can be more effectively evaluated based on the risk-significance and performance of plant systems and based on confidence that there will be appropriate feedback to assure that the level of safety is not being degraded.

NRC Maintenance Rule

The maintenance rule, 10 CFR 50.65, was issued on July 10, 1991 (56 FR 31306). The reliability and availability information that would be required by the proposed reporting rule would improve the NRC's oversight of licensees' implementation of the maintenance rule. It would also enhance licensee's capabilities to implement the evaluation and goal-setting activities required by the maintenance rule by providing licensees with access to current industry-wide reliability and availability information for some of the systems and equipment within the scope of the maintenance rule.

NRC Monitoring

As discussed above, current plant-specific data can provide feedback on the effectiveness of licensee programs, including maintenance programs. Accordingly, these data would improve the NRC's monitoring ability by providing risk-based measures of the effectiveness of individual licensee maintenance programs and the overall effectiveness of the maintenance rule.

In addition, the NRC has expressed concern about the extent to which some reactor licensees are taking systems and equipment out of service for maintenance during plant operation. Although this practice may offer economic benefits by reducing plant

downtime, it must be properly managed to assure that safety is not compromised. It should be noted that licensees are required by 10 CFR 50.65(a)(3) to periodically conduct assessments and make adjustments to ensure that the objective of preventing failures through maintenance is appropriately balanced against the objective of minimizing unavailability due to monitoring and preventive maintenance. The NRC would use the hours when any two or more trains from the same or different systems are concurrently unavailable to monitor how well licensees are managing the risk associated with such maintenance. As discussed below, under ''Licensee Implementation,'' the data would also enhance licensees' capabilities to make prudent on-line maintenance decisions.

The maintenance rule is also important to license renewal (10 CFR Part 54). Hence, improving the NRC's oversight of the maintenance rule could strengthen one of the bases for the scope of the license renewal rule.

Licensee Implementation

In connection with the NRC's PRA policy, the NRC staff has defined the data elements that would improve the evaluation of maintenance and has established that they are the same as those needed to support a transition toward a risk- and performance-based regulatory process. The NRC believes that the reliability and availability data that would be required by this rule would enhance licensee's capabilities to implement the evaluation and goal-setting activities required by the maintenance rule by providing licensees with access to current industry-wide reliability and availability information for some of the systems and equipment within the scope of the maintenance rule.[3]

In some circumstances, the maintenance rule requires licensees to establish performance or condition goals, taking into account industry-wide operating experience where practical. It also requires periodic program evaluations, including consideration of unavailability due to monitoring or preventive maintenance, taking industry-wide operating experience into account, where practical. Licensees will need to monitor reliability and availability of risk-significant systems, particularly for the periodic program evaluations.[4]

For many of the systems involved, plant-specific demand and failure data will be sparse, at least initially. However statistical analysis techniques exist that allow a licensee to analyze and evaluate data from similar equipment, applications and environments from other plants, besides the data from their plant. These analyses yield meaningful reliability estimates for the subject plant that can be compared with performance goals. Industry-wide data would also provide a practical source for comparing plant-specific performance with industry operating experience. Although plant-specific information is generally available on site, and utilities review licensee event reports and other generic event information, NRC site visits, associated with early efforts to prepare for maintenance rule implementation in 1996, indicate that utilities do not use industry operating experience in a systematic and consistent way for goal setting purposes under the maintenance rule. Based on these considerations, the availability of current, industry-wide reliability and availability data would enhance licensee's capabilities to implement the evaluation and goal-setting activities required by the maintenance rule.

As discussed previously, the NRC has recently found cause for concern about how some reactor licensees handle on-line maintenance. Prudent on-line maintenance decisions depend on a full appreciation of the risk-significance of taking equipment out of service (individually or collectively) and use of plant-specific and generic reliability and availability data would play a significant role in improving such decision making.

Description of Proposed Rule

The proposed rule would require holders of operating licenses for nuclear power reactors to report reliability and availability data for certain risk-significant systems and equipment. The proposed reporting requirements would apply to the event-mitigating systems and equipment which have or could have a significant effect on risk in terms of avoiding core damage accidents or preserving containment integrity. Summary information reported to the NRC would be:

1. The number of demands, the number of failures to start associated with such demands, and the dates of any such failures, characterized according to the identification of the train affected, the type of demand (test, inadvertent/spurious, or actual need), and the plant mode at the time of the demand (operating or shutdown);

2. The number of hours of operation following each successful start, characterized according to the identification of the train affected and whether or not the operation was terminated because of equipment failure, with the dates of any such failures;

3. The number of hours equipment is unavailable, characterized according to the identification of the train affected, the plant mode at the time equipment is unavailable (operating or shutdown), characterization of the unavailable period (planned, unplanned, or support system unavailable), and, if due to a support system being unavailable, identification of the support system;

4. For each period equipment is unavailable due to component failure(s), a failure record identifying the component(s) and providing the failure date, duration, mode, cause, and effect; and

5. The number of hours when two or more trains from the same or different systems were concurrently unavailable, characterized according to the identification of the trains that were unavailable.

The first annual report would identify the systems, trains, and ensembles of components covered by the reporting requirements of the rule; subsequent annual reports would either state that no changes were made subsequent to the previous annual report or describe the changes made.

The summary information would be reported annually and compiled on the basis of calendar quarters, or on a more frequent basis at the option of each individual licensee. Records and documentation of each occurrence of a demand, failure, or unavailable period

[3] The systems and equipment covered by this proposed rule are a subset of the systems and equipment within the scope of the maintenance rule. The data elements are more extensive than what would be required for compliance with the maintenance rule; however, for the systems covered, these data elements would serve to improve implementation of the maintenance rule. To cite one example, under 10 CFR 50.65(a)(2), risk-significant systems may be considered to be subject to an effective preventive maintenance program and, thus, not subject to condition or performance monitoring unless ''maintenance preventable'' failures occur. However, gathering the reliability and availability information specified in this proposed rule, including data elements such as concurrent outages and the causes of failures, would provide a better picture of a system's performance and the effectiveness of the preventive maintenance program than simply awaiting the occurrence of ''maintenance preventable'' failures.

[4] NUMARC 93–01, which the NRC has endorsed as describing one acceptable way of meeting the requirements of the NRC's maintenance rule, indicates in Section 12.2.4 that the adjustment for balancing of objectives needs to be done for risk-significant structures, systems, and components (SSCs). However, for other SSCs it is acceptable to measure operating SSC performance against overall plant performance criteria and standby system performance against specific performance criteria. This is reasonable in that, for systems that are less risk-significant, the expense of a rigorous balancing is not warranted.

that provide the basis for the summary data reported to the NRC would be required to be maintained on site and made available for NRC inspection.

In developing these data elements the NRC has, over the past three years, reached a consensus on the minimum data needed to support risk-based applications and enhance implementation of the maintenance rule. During this period NRC staff has also interacted extensively with INPO and NEI in an effort to define the minimum reliability and availability data needed to satisfy the needs of both NRC risk-based regulatory applications and industry (licensee) uses of PRA.

The number of demands and the number of successful starts are needed to estimate demand reliability, i.e., the fraction of demands that result in successful starts. (The complement of this fraction provides an estimate of the probability of failure on demand). The actual number of demands and successes, as opposed to the ratio, is needed for purposes such as: (1) providing a measure of confidence in the results and (2) permitting proper combination of data from different plants.

The type of demand is needed to determine whether or not the demand reliability estimated by testing is approximately the same as the demand reliability for actual demands. Sometimes it is not, indicating a need for additional data analysis in making reliability estimates.

The plant mode at the time of a demand is needed to estimate the demand frequency, demand reliability, and unavailability according to plant mode. These factors, as well as the risk associated with unreliability and unavailability, can be quite different depending on whether the plant is in operation or shut down.

The hours of operation following successful starts are needed to estimate the probability the equipment will function for a specified period of time. This information is needed for systems that must operate for an extended period following an accident to fulfill a risk-significant safety function.

The number of hours that equipment is not available (unavailable hours) is needed to estimate the fraction of time that a train is not available to perform its risk-significant safety function. For some systems this can be an important or dominant contributor to the overall probability of failure to perform the system's safety function. It can be significantly affected by elective maintenance.

The type of unavailable hours (planned or unplanned) is needed to effectively utilize these estimates. For example, a high unplanned unavailability may indicate a need for more preventive maintenance; a high planned unavailability may indicate the opposite.

The unavailable hours due to support systems failure or unavailability are needed to properly capture concurrent outages and to eliminate double counting. For example, an Emergency Service Water (ESW) train being unavailable may result in other trains being unavailable as well; however, for purposes of estimating risk in a PRA study, that unavailability should not be counted more than once.

The date of each failure is needed to allow screening for potential common cause failures. Failures that occur closely together in time warrant review to see whether a common cause failure may be involved. Common cause failures may indicate a need for revised maintenance procedures or staggered testing. Common cause failure rates are also needed for PRA models because of their importance in system reliability and availability estimates.

Failure cause and failure mode information are needed to support common cause failure analysis as discussed above and to associate the failure with the correct failure mode for input into PRA models.

Quarterly data are needed to conduct first order trending studies to identify areas of emerging concern with regard to overall plant and system performance. More frequent compilation is acceptable at the discretion of each licensee.

An identification of the systems, trains, and ensembles of components subject to the rule is needed because identification of the components within the systems, trains, and ensembles is necessary for proper use and evaluation of the data by the staff and for industry wide generic applications to account for physical differences between plants. For example, simplified system diagrams could be marked to show the systems, trains, and ensembles against which the data would be reported.

Retention of records and documentation that provide the bases for the summary data report to the NRC for a period of several years is consistent with maintenance rule applications. For example, monitoring reliability for a few years may be used to determine trends in order to achieve the balance described in 10 CFR 50.65(a)(3)—i.e., the balance between preventing failures through maintenance and minimizing unavailability due to monitoring and preventive maintenance. In addition, on-site data are needed to provide a scrutable basis for regulatory decisions. For example, it is expected to be necessary to review the actual unavailable hours in order to estimate the mean repair times for key components for the purpose of updating the staff's PRA models.

Regulatory Guide

A new regulatory guide will be prepared and issued to provide supplementary guidance. The guide will present an acceptable way to define the systems and equipment subject to the rule and it will provide risk-based definitions of failure as well as train and system boundaries consistent with PRA applications. The format in which data would be provided to the NRC and a suggested format for maintaining on-site documentation and record keeping would be included. In order to reduce costs, use of electronic data submittal will be considered a priority objective in developing and implementing the guide. A draft guide will be published for comment before it is finalized. A public workshop is planned after publication of the draft guide. The comment period for this proposed rule will not expire until at least 30 days after publication of the draft regulatory guide.

Definitions

The basic definitions used in reporting under § 50.76 are discussed below; further details will be addressed in the regulatory guide. For example, the basic definition of failure is provided here; further details, such as how to handle a case where the operators prematurely terminate system operation following a real demand, will be discussed in the regulatory guide. In particular, the regulatory guide will define risk-significant safety function(s) and failures for systems and equipment covered by this proposed rule.

Demand is an occurrence where a system or train is called upon to perform its risk-significant safety function. A demand may be manual or automatic. It may occur in response to a real need, a test, an error, an equipment malfunction or other spurious causes. For the purposes of reporting under this rule, the demands of interest are those which are actual demands or closely simulate actual demands for the train or specific equipment involved.

Failure, for the purpose of reporting under this rule, is an occurrence where a system or train fails to perform its risk-significant safety function. A failure may occur as a result of a hardware malfunction, a software malfunction, or a human error. Failures to start in response to a demand are reported under paragraph 50.76(b)(1)(i). Failures

to run after a successful start are reported under paragraph 50.76(b)(1)(ii).

Unavailability is the probability that a required system or train is not in a condition to perform or is not capable of performing its risk-significant safety function. This may result from failure to start, from failure to run, or from intentional or unintentional removal of equipment from service (e.g., for maintenance or testing).

Risk-significant safety function is a safety function that has or could have a significant effect on risk (in terms of avoiding core damage accidents or preserving containment integrity for the purposes of reporting under this proposed rule).

Reportable systems and equipment are the event-mitigating systems and equipment which have or could have a significant effect on risk in terms of avoiding core damage accidents or preserving containment integrity. The reportable systems and equipment will be determined by each licensee. The regulatory guide will describe acceptable methods for making that determination.

It is expected that the rule will produce a set of basic systems for which reliability data will be reported for all plants that have them. However, these basic systems are not sufficient by themselves. Additional systems and equipment to be addressed will depend on plant-specific features. Listed below is the set of basic systems that the Commission is currently considering for identification in the draft regulatory guide.

Basic PWR systems	Basic BWR systems
Auxiliary feedwater	Reactor core isolation cooling or isolation condenser.
High pressure safety injection.	Feedwater coolant injection, high pressure coolant injection or high pressure core spray, as appropriate.
Reactor protection	Reactor protection.
Low pressure safety injection.	Low pressure coolant injection and low pressure core spray.
Emergency ac power	Emergency ac power.

As discussed above, the systems and equipment to be included in the scope of the rule would be those event-mitigating systems and equipment that have or could have a significant effect on risk in terms of avoiding core damage accidents or preserving containment integrity. To ensure that this approach is consistent with operating experience, the NRC has considered the systems and equipment that have been substantially involved in significant events in U. S. reactors. These systems were found to fall into the following categories:

1. Basic systems. As indicated above, the NRC expects that these systems would be included in the scope of the rule for all plants. The basic systems on the proposed list have been confirmed to have been substantially involved in significant events.

2. Plant-specific systems. Systems such as service water and component cooling water are risk-significant, but the significance varies widely, depending upon plant-specific designs. It is expected that these systems will be included, as appropriate, based on plant-specific PRA studies. Other systems, such as containment purge, appear infrequently in connection with significant events and are not expected to be risk-significant for any plants.

3. Initiating systems. Systems such as main feedwater and offsite power are primarily considered to be initiators of significant events, rather than mitigation systems. Existing reporting requirements in 10 CFR 50.72 and 10 CFR 50.73 provide enough information to characterize the important initiating systems for the purpose of PRA studies.

4. Non-measurable items. Items such as reactor coolant system corrosion are not amenable to meaningful measurement by the methods of this proposed rule.

Based on this review, the systems and equipment to be included in the scope of the rule are considered reasonably consistent with operating experience in terms of involvement in significant events. Accordingly, it is expected that reliability and availability information for those systems and equipment will be well suited for identifying plants and systems at increased risk for significant events.

Minimizing Costs. The NRC intends that the data required to be collected and reported under this proposed rule be essentially the same as would be required for monitoring reliability and/or availability for other purposes, such as monitoring system reliability where that is the option chosen for compliance with the maintenance rule. Thus, it should be practical to gather and report the data without significant additional cost. This will be a priority goal in developing the guidance to be included in the new regulatory guide.

Sunset Provision. As experience is gained with implementing the proposed rule and utilizing the information required to be collected and reported, a reassessment may be necessary or desirable. One way of assuring such a reassessment would be to include a ''sunset provision'' in the rule, whereby the rule would automatically expire after a specified period of time unless: (i) a condition specified in the rule is fulfilled, or (ii) the Commission engages in a rulemaking which extends the effectiveness of the rule. The Commission requests public comments on whether the proposed rule should contain such a sunset provision, and if so, the period of time after which the rule should automatically expire.

Grandfather Provision. There may be some plants for which, at the time that the proposed rule may be adopted by the Commission as a final rule, licensees have already announced plans to discontinue operation in the near future. Furthermore, licensees may determine in the future to discontinue operation at some plants. In either case, there may be less reason to require collection and reporting of the information contemplated by the proposed rule at such plants and it may be advisable to exempt such plants from the information collection and reporting requirements of the proposed rule (i.e., ''grandfathering''). The Commission requests public comments on whether the proposed rule should exempt plants that have announced (or will announce) plans to discontinue operation within a short time (e.g., two years).

Conclusion

As discussed under the subject ''Move to Risk-Based Regulation,'' the information to be collected under the proposed rule is necessary for the development and implementation of risk-based regulatory processes. Risk-based regulatory approaches provide a means for the Commission to maintain, and in some cases improve, safety while reducing impacts on licensees as well as NRC resource expenditures, by focusing regulatory requirements and activities on the most risk-significant areas. In addition, this information would improve the NRC's oversight of licensees' implementation of the maintenance rule. It would also enhance licensee's capabilities to implement the evaluation and goal-setting activities required by the maintenance rule by providing licensees with access to current industry-wide reliability and availability information for some of the risk-significant systems and equipment within the scope of the maintenance rule. The Commission has also prepared a regulatory analysis (see ''Regulatory Analysis'') which identified alternatives for collecting the information for use by both licensees and the NRC, and evaluated the costs of each viable alternative. Based upon these factors, the Commission believes that the costs

of the proposed rule's information collection and reporting requirements are justified in view of the potential safety significance and projected benefits of the information in NRC regulatory activities.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of their comments in an electronic format on IBM PC DOS-compatible 3.5- or 5.25-inch, double-sided, diskettes. Data files should be provided in WordPerfect 5.0 or 5.1. ASCII code is also acceptable, or if formatted text is required, data files should be submitted in IBM Revisable Format Text Document Content Architecture (RFT/DCA) format.

Environmental Impact: Categorical Exclusion

The proposed rule sets forth requirements for the collection, maintenance, and reporting of reliability and availability data for certain risk-significant systems and equipment. The NRC has determined that this proposed rule is the type of action described in categorical exclusion, 10 CFR 51.22(c)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to OMB for review and approval of the Paperwork Reduction Act requirements.

The public reporting burden for this collection of information is estimated to average 1375 hours per response (i.e., per commercial nuclear power reactor per year), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, and does the information have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized including by using automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by March 13, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–6835.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (B)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC on April 11, 1995 (60 FR 18344—10 CFR 2.810.

Backfit Analysis

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

However, as discussed above in ''Regulatory Analysis,'' the Commission has prepared a regulatory analysis which summarizes the purpose and intended use of the information proposed to be collected, identifies alternatives for collection and reporting of the proposed information, and identifies the impacts and benefits of the alternatives.

This regulatory analysis constitutes a disciplined process for evaluating the potential benefits and projected impacts (burdens) of information collection and reporting requirements such as the proposed rule. The Commission therefore concludes that the objective underlying the Commission's adoption of the Backfit Rule—that regulatory impacts are assessed under established criteria in a disciplined process—is being met for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sections 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S. C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55,

and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.8(b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.71, 50.72, 50.75, 50.76, 50.80, 50.82, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R.

* * * * *

3. Section 50.76 is added to read as follows:

§ 50.76 Reporting reliability and availability information for risk-significant systems and equipment.

(a) *Applicability.* This section applies to all holders of operating licenses for commercial nuclear power plants under 10 CFR 50.21b or 50.22 and all holders of combined operating licenses for commercial nuclear power plants under 10 CFR 52.97.

(b) *Requirements.* (1) Each licensee shall submit an annual report to the NRC that contains the following information, compiled on the basis of calendar quarters, or on a more frequent basis at the option of each licensee, for systems, trains, and ensembles of components in paragraph (b)(3) of this section:

(i) The number of demands, the number of failures to start associated with such demands, and the dates of such failures, characterized according to the identification of the train affected, the type of demand (test, inadvertent/spurious, or actual need), and the plant mode at the time of the demand (operating or shutdown);

(ii) The number of hours of operation following each successful start, characterized according to the identification of the train affected and whether or not the operation was terminated because of equipment failure, with the dates of any such failures;

(iii) The number of hours equipment is unavailable, characterized according to the identification of the train affected, the plant mode at the time equipment is unavailable (operating or shutdown), characterization of the unavailable period (planned, unplanned, or support system unavailable), and, if due to a support system being unavailable, identification of the support system;

(iv) For each period equipment is unavailable due to component failure(s), a failure record identifying the component(s) and providing the failure date, duration, mode, cause, and effect; and

(v) The number of hours when two or more trains from the same or different systems were concurrently unavailable, characterized according to the identification of the trains that were unavailable.

(2) The initial annual report described in (b)(1) above shall identify the systems, trains, and ensembles of components covered by paragraph (b)(3) below; subsequent annual reports shall either state that no changes were made subsequent to the previous annual report or describe any changes made.

(3) The requirements of paragraphs (b)(1) and (b)(2) of this section apply to those event-mitigation systems, and ensembles of components treated as single entities in certain probabilistic risk assessments where a system or train treatment would not be appropriate, which have or could have a significant effect on risk in terms of avoiding core damage accidents or preserving containment integrity.

(4) Each licensee shall maintain records and documentation of each occurrence of a demand, failure, or unavailable period that provide the basis for the data reported in paragraph (b)(1) of this section on site and available for NRC inspection for a period of 5 years after the date of the report specified in paragraph (b)(1) of this section.

(c) *Implementation.* Licensees shall begin collecting the information required by paragraph (b) of this section on January 1, 1997, and shall submit the first report required by paragraph (b)(1) of this section by January 31, 1998. Thereafter, each annual report required by paragraph (b)(1) of this section shall be submitted by January 31 of the following year.

Dated at Rockville, MD, this 2nd day of February, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–2698 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–133–AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that would have required inspections to detect missing fasteners, cracked fitting angles, and elongated fastener holes in certain frames, and correction of discrepancies. That proposal was prompted by discrepancies found at the fitting angles on the frame at which a certain electronic rack is attached. This action revises the proposed rule by revising the inspection thresholds and repetitive intervals; providing an optional terminating action; and deleting certain airplanes from the applicability. The actions specified by this proposed AD are intended to prevent damage propagation that could lead to failure of the rack-to-structure attachment points, and subsequently could result in loss of airplane systems, structural damage, and possible electrical arcing.

DATES: Comments must be received by March 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–133–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton,

Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 93–NM–133–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–133–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on September 13, 1993 (58 FR 47837). That NPRM would have required repetitive inspections to detect missing fasteners, cracked fitting angles, and elongated fastener holes in certain frames; and the correction of any discrepancies identified. The initial inspection would have been required to be performed prior to the accumulation of 8,000 total flight cycles; repetitive inspections would have been required every 850 flight cycles thereafter.

That NPRM was prompted by various discrepancies that were found on three airplanes at the fitting angles on frame 16 at the lower attachments of electric rack 101VU. These discrepancies included missing fasteners, elongated fastener holes, and cracks. Discrepancies such as those found in the subject area, if not detected and corrected in a timely manner, could lead to failure of the attachment points to secure the electric rack to the adjacent structure. This condition could result in loss of airplane systems, structural damage, and possible electrical arcing.

Since the issuance of that NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, and Airbus Industrie have notified the FAA that additional analysis has been conducted relative to the identified problem. The results of this analysis, together with in-service data that were gathered in the interim, indicate that the initial inspection of the subject area must be conducted earlier than previously considered, but subsequent inspections may be conducted at greater intervals.

Airbus has issued the following service bulletins, which concern this subject:

1. Airbus Service Bulletin A300–53–0300, dated October 28, 1993, which pertains to Model A300 series airplanes;

2. Airbus Service Bulletin A310–53–2077, dated October 28, 1993, which pertains to Model A310 series airplanes; and

3. Airbus Service Bulletin A300–53–6055, dated October 28, 1993, which pertains to Model A300–600 series airplanes.

Each of these service bulletins describe procedures for performing a detailed visual inspection to detect damage of the lower attachments of electric rack 101VU, and the replacement of any missing or damaged fasteners identified. These service bulletins recommend that the initial inspection be performed prior to the accumulation of 7,000 total flight cycles, and that repetitive inspection be performed every 2,300 flight cycles.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (CN) 92–253–138(B), dated February 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

Airbus has also issued the following service bulletins:

1. Airbus Service Bulletin A300–53–0294, dated May 17, 1993, which pertains to Model A300 series airplanes;

2. Airbus Service Bulletin A310–53–2076, dated May 17, 1993, which pertains to Model A310 series airplanes; and

3. Airbus Service Bulletin A300–53–6046, dated May 17, 1993, which pertains to Model A300–600 series airplanes.

These service bulletins describe procedures for installing Modification No. 10414. This modification entails installation of new thicker attachments and new plates on the front face of frames 15A and 16. Accomplishment of this modification eliminates the need for the repetitive inspections of the subject area. The DGAC classified these service bulletins as recommended.

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 an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed action would revise the previously issued NPRM to require that an initial inspection to detect discrepancies be conducted prior to the accumulation of 7,000 total flight cycles (or within 50 flight cycles after the effective date of the final rule, whichever is later). This inspection would be required to be repeated thereafter at intervals not to exceed 2,300 flight cycles. Any missing or damaged fasteners would be required to be replaced prior to further flight. These actions would be required to be accomplished in accordance with the Airbus service bulletins described previously.

This revised proposal also would require that any cross beam found damaged be repaired prior to further flight in accordance with a method approved by the FAA.

This revised proposal also would require that, if any one or more angle fitting is found to be cracked, Modification No. 10414 must be installed prior to further flight. Operators should note that this particular proposed requirement would differ from the procedures described in the relevant Airbus service bulletins, which allow airplanes to continue to be

flown if one or more angle fitting is cracked. The FAA finds that, since each of the four angle fittings that secure the electric rack to the frame is subject to the same potential for cracking, the decreased load-carrying ability of a cracked fitting(s) may lead to faster crack growth in the remaining fittings. Therefore, the FAA has determined that continued flight with one or more unrepaired cracked fittings is inappropriate.

Installation of Modification No. 10414 would constitute terminating action for the inspections that would be required by this proposed AD.

Additionally, this action revises the applicability of the proposed rule to delete those airplanes on which Modification No. 10414 or its equivalent has been installed previously.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 78 Model A300, A310, and A300–600 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1.5 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,020, or $90 per airplane, per inspection.

This cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, rather than continue the repetitive inspections, it would take approximately 7 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $1,615 per airplane. Based on these figures, the cost impact of the optional terminating action would be $2,035 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus: Docket 93–NM–133–AD.

Applicability: Model A300 series airplanes listed in Airbus Service Bulletin A300–53–0300, dated October 28, 1993; Model A310 series airplanes listed in Airbus Service Bulletin A310–53–2077, dated October 28, 1993; and Model A300–600 series airplanes listed in Airbus Service Bulletin A300–53–6055, dated October 28, 1993; on which Airbus Modification No. 10414 or production equivalent has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the electric rack-to-structure attachment points, which could subsequently result in loss of airplane systems, structural damage, and possible electrical arcing, accomplish the following:

(a) Prior to the accumulation of 7,000 total flight cycles, or within 50 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the right- and left-hand lower attachments of electric rack 101VU, including the crossbeams at frames 15A and 16, to detect missing fasteners, cracked fitting angles, or elongated fastener holes, in accordance with Airbus Service Bulletin A300–53–0300 (for Model A300 series airplanes), dated October 28, 1993; Airbus Service Bulletin A310–53–2077 (For Model A310 series airplanes), dated October 28, 1993; or Airbus Service Bulletin A300–53–6055 (for Model A300–600 series airplanes), dated October 28, 1993; as applicable.

Note 2: Inspections accomplished in accordance with Airbus Industrie All Operator Telex (AOT) 53–03, Revision 3, dated December 23, 1992, prior to the effective date of this AD, are considered acceptable for compliance with the inspection requirements of this paragraph.

(b) If no discrepancies are identified during the inspection required by paragraph (a) of this AD, repeat the detailed visual inspection thereafter at intervals not to exceed 2,300 flight cycles.

(c) If any fastener is missing or is found to be damaged during any inspection required by this AD, prior to further flight, replace the fastener in accordance with Airbus Service Bulletin A300–53–0300 (for Model A300 series airplanes), dated October 28, 1993; Airbus Service Bulletin A310–53–2077 (For Model A310 series airplanes), dated October 28, 1993; or Airbus Service Bulletin A300–53–6055 (for Model A300–600 series airplanes), dated October 28, 1993; as applicable.

(d) If any fitting angle is found to be cracked during any inspection required by this AD, prior to further flight, install Modification No. 10414 in accordance with Airbus Service Bulletin A300–53–0294 (for Model A300 series airplanes), dated May 17, 1993; Airbus Service Bulletin A310–53–2076 (for Model A310 series airplanes), dated May 17, 1993; or Airbus Service Bulletin A300–53–6046 (for Model A300–600 series airplanes), dated May 17, 1993; as applicable. Installation of this modification constitutes terminating action for the inspections required by this AD.

(e) If any crossbeam is found damaged during any inspection required by this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) Installation of Modification No. 10414 in accordance with Airbus Service Bulletin A300–53–0294 (for Model A300 series airplanes), dated May 17, 1993; Airbus Service Bulletin A310–53–2076 (for Model A310 series airplanes), dated May 17, 1993; or Airbus Service Bulletin A300–53–6046 (for Model A300–600 series airplanes), dated May 17, 1993; as applicable; constitutes terminating action for the inspections required by this AD.

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

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

(h) Special flight permits may be issued in accordance with 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 February 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–2998 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–29–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that would have required a one-time operational test of the pitot heating system, and repair or replacement of failed elements. That AD also would have required modification of certain electrical wiring, and replacement of the pitot head and a certain relay. This action revises the proposed rule by adding a new requirement to replace the pitot heating system with a new improved system, in lieu of modifying the electrical wiring and replacing the pitot head and relay. This action also revises the applicability of the proposed rule to include additional airplanes. The actions specified by this proposed AD are intended to prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer, or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System.

DATES: Comments must be received by March 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–29–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–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on April 18, 1995 (60 FR 19383). That NPRM would have required a one-time operational test of the No. 1 pitot heating system, and repair or replacement of failed elements. That AD also would have required modification of certain electrical wiring, replacement of the pitot head with a new pitot head, and replacement of the single direct current (DC) current-sensing relay with two new DC current sensing relays. That NPRM was prompted by reports indicating that the No. 1 Air Data Computer (ADC #1) failed on Model F28 Mark 0100 series airplanes due to icing at the No. 1 pitot tube. Icing of the No. 1 pitot heat system, if not corrected, could result in failure of the ADC #1 or lead to output of erroneous data to all on-side subsidiary systems including the Automatic Flight Control and Augmentation System (AFCAS).

Since the issuance of that NPRM, one operator has reported that several failures of the captain's airspeed indicator and ADC #1 have occurred during encounters with severe icing. These failures were accompanied by a malfunction alert from all on-side subsidiary systems; however, no failures of the pitot heating system were reported. Subsequent investigation revealed that the DC heating capacity of the captain's pitot tube is inadequate to prevent freezing of the pitot tube in severe icing conditions.

The captain's DC powered pitot heating systems installed on Fokker Model F28 Mark 0100 series airplanes are also installed on certain Fokker Model F28 Mark 0070 series airplanes; therefore, those airplanes are also

subject to the addressed unsafe condition.

Additionally, since the issuance of that NPRM, Fokker has issued Service Bulletin SBF100–30–017, dated August 23, 1995. This service bulletin describes procedures for replacement of the captain's pitot heating system with a new improved pitot heating system. This replacement involves a new pitot tube that has an alternating current (AC) powered heating system, that will prevent freezing of the captain's pitot tube during severe icing conditions. (This pitot heating system is the same system as that currently used on the First Officer's position and auxiliary systems.) The effectivity of this service bulletin includes certain additional Model F28 Mark 0100 series airplanes, and certain Model F28 Mark 0070 series airplanes, that are subject to the unsafe condition. (These airplanes were not identified in the original NPRM.) The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, approved this service bulletin and issued Netherlands airworthiness directive BLA 1994–114/3(A), dated September 29, 1995, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The FAA has examined the findings of the RLD and reviewed the new service information. The FAA finds that the actions proposed in paragraph (b) of the original NPRM will not prevent freezing of the pitot head during severe icing conditions. Therefore, to ensure safety of the fleet, the FAA finds that replacement of the pitot heating system with new improved pitot heating system, as specified in Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, is necessary. The FAA has revised paragraph (b) of this supplemental NPRM accordingly.

In addition, the FAA has revised the applicability of this proposed rule to include airplanes as listed in Fokker Service Bulletin SBF100–30–017, dated August 23, 1995.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Operators should note that the operational test of the No. 1 pitot heating system, as proposed previously, continues to be required in this supplemental NPRM. The FAA has determined that accomplishment of this operational test is necessary to determine if any pitot tube heating element is inoperative, and to ensure that any failed element is repaired or replaced.

The FAA estimates that 129 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the operational test and 36 work hours to accomplish the replacement, at an average labor rate of $60 per work hour. Required replacement parts would cost approximately $10,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,640,880, or $12,720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–29–AD.

Applicability: Model F28 Mark 0100 and 0070 series airplanes; as listed in Fokker SBF100–30–015, Revision 2, dated January 25, 1995, and Fokker Service SBF100–30–017, dated August 23, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 as indicated, unless accomplished previously. To prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer (ADC #1) or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System (AFCAS), accomplish the following:

(a) For airplanes listed in Fokker SBF100–30–015, Revision 2, dated January 25, 1995: Within 30 days after the effective date of this AD, perform an operational test of the No. 1 pitot heating system in accordance with Part 1 of the Accomplishment Instructions of that service bulletin.

(1) If the pitot heating system passes the operational test, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, at the times specified.

(2) If any pitot tube heating element is found to be inoperative, prior to further flight, repair or replace the failed element with a serviceable element, in accordance with the Fokker 100 Aircraft Maintenance Manual (AMM).

(b) For all airplanes: Replace the No. 1 pitot heating system with a new pitot heating system, in accordance with Part 1, 2, 3, or 4 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–017, dated August 23, 1995. Accomplish this action at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes that are equipped with a Flight Warning System (FWS) speed comparator that is not activated, and a Rosemount type 853JB No. 1 pitot heating system: Accomplish the replacement within 9 months after the effective date of this AD.

(2) For airplanes that are equipped either with an FWS speed comparator that is activated, or with a Rosemount type 853KK No. 1 pitot heating system: Accomplish the replacement within 18 months after the effective date of this AD.

(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.

Issued in Renton, Washington, on February 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–2997 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–224–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that currently requires certain maximum brake wear limits to be incorporated into the FAA-approved maintenance inspection program. That AD also currently requires that the Airplane Flight Manual (AFM) be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO). This action would add a requirement for the incorporation of new maximum brake wear limits for additional brake units into the FAA-approved maintenance program. This action would also delete the current requirement for the AFM revision. This proposal is prompted by the determination of the maximum allowable brake wear limits for additional brake unit part numbers. The actions specified by the proposed AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

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–224–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.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–224–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–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 7, 1994, the FAA issued AD 94–06–06, amendment 39–8854 (59 FR 11713, March 14, 1994), applicable to certain Fokker Model F28 Mark 0100 series airplanes, to require that certain maximum brake wear limits be incorporated into the FAA-approved maintenance program. That AD also requires that the Airplane Flight Manual (AFM) be revised to include certain procedures concerning operations in the event of a rejected takeoff (RTO). That action was prompted by an accident in which a transport category airplane executed an RTO and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The requirements of that AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

Actions Since AD 94–06–06 Was Issued

Since the issuance of that AD, additional brake unit part numbers, that were not addressed in the existing rule, have been evaluated and the maximum allowable brake wear limits for these brake units have been determined in accordance with a methodology approved by the FAA. The FAA has determined that both Model F28 Mark 0100 and F28 Mark 0070 series airplanes equipped with these brake units are currently subjected to the same unsafe condition addressed in the existing AD, and that the newly identified maximum brake wear limits must be applied to these brake configurations in order to ensure their braking effectiveness.

In addition, the FAA has reviewed the results of 100% worn brake RTO testing on the subject brake units as installed on Model F28 Mark 0100 and 0070 series airplanes. Based on the successful results of these laboratory tests, the FAA finds that the main landing gear sliding member on these airplanes will not overheat beyond approved limits after an RTO. Therefore, the FAA has determined that the AFM revision currently required by paragraphs (b) and (c) of AD 94–06–06 is no longer necessary.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Proposed New Requirements

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes that are of the same type design, that are equipped with the subject brake configurations, and that are registered in the United States, the proposed AD would supersede AD 94–06–06. It would continue to require that maximum brake wear limits for certain brake units be incorporated into the FAA-approved maintenance program. The proposed AD would require that new maximum brake wear limits and alternate wear measurements (AWM*) for additional brake units be incorporated into the FAA-approved maintenance program.

(*An AWM is a measurement of the brake stack that determines stack wear. This measurement is used for any brake assembly without a wear indicator pin, or any brake assembly having a damaged wear indicator pin. The brake wear can be determined by measuring the distance from the back of the pressure plate subassembly to the inboard face of the brake housing at the wear indicator location.)

Cost Impact

There are approximately 124 Model F28 Mark 0100 and 0070 series airplanes of U.S. registry and 5 U.S. operators that would be affected by this proposed AD. The actions that are currently required by AD 94–06–06 take approximately 20 work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $6,000, or $1,200 per operator.

The new actions that are proposed in this AD action would take approximately 20 work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $6,000, or $1,200 per operator.

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.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8854 (59 FR 11713, March 14, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Fokker: Docket 95–NM–224–AD. Supersedes AD 94–06–06, Amendment 39–8854.

Applicability: Model F28 Mark 0100 and F28 Mark 0070 series airplanes, equipped with Aircraft Braking Systems Corp. brakes having part number (P/N) 5008132–2, –3, –4, –5, –6, –7, or 5011809; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 as indicated, unless accomplished previously.

To prevent loss of brake effectiveness during a high energy rejected take off (RTO), accomplish the following:

Note 2: An alternate wear measurement (AWM) is a measurement of the brake stack that determines stack wear. This measurement is used for any brake assembly without a wear indicator pin, or any brake assembly having a damaged wear indicator pin. The brake wear can be determined by measuring the distance from the back of the pressure plate subassembly to the inboard face of the brake housing at the wear indicator location.

(a) For Model F28 Mark 0100 series airplanes: Within 180 days after April 13, 1994 (the effective date of AD 94–06–06, amendment 39–8854), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Incorporate the maximum brake wear limits specified in the following tables into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

BRAKE MANUFACTURER AIRCRAFT BRAKING SYSTEMS CORP. (ABS)

TABLE 1.—MAXIMUM SETTINGS—NON REFURBISHED BRAKES

Brake P/N	Maximum wear pin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132–2	1.85″ (47 mm)	4.00″ (101.6 mm)
5008132–3	1.85″ (47 mm)	4.00″ (101.6 mm)
5008132–4	2.10″ (53.3 mm)	4.25″ (107.9 mm)
5008132–5	2.10″ (53.3 mm)	4.25″ (107.9 mm)
5008132–6	2.10″ (53.3 mm)	4.25″ (107.9 mm)
5008132–7	2.10″ (53.3 mm)	4.25″ (107.9 mm)

Note 3: Measuring instructions for non refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP–652 (Fokker Manual No. 32–43–77) or in ABS Service Bulletin Fo100–32–35. ABS Service Bulletin Fo100–32–35 does not contain measurement information relative to brake P/N's 5008132–2 and –3.

TABLE 2.—MAXIMUM SETTINGS—REFURBISHED BRAKES

Brake P/N	Maximum wear pin measurement (inch/mm)	Alternate wear measurement (inch/mm)
5008132–2	1.85″ (47 mm)	4.00″ (101.6 mm)
5008132–3	1.85″ (47 mm)	4.00″ (101.6 mm)
5008132–4	2.20″ (55.9 mm)	4.35″ (110.5 mm)
5008132–5	2.20″ (55.9 mm)	4.35″ (110.5 mm)
5008132–6	2.20″ (55.9 mm)	4.35″ (110.5 mm)
5008132–7	2.20″ (55.9 mm)	4.35″ (110.5 mm)

Note 4: Refurbished brakes will have ''R11–3'' etched on the brake housing adjacent to the shuttle valve.

Note 5: Measuring instructions for refurbished brakes can be found in the ABS Component Maintenance Manual with Illustrated Parts List AP–652 (Fokker Manual No. 32–43–77) or in ABS Service Bulletin Fo100–32–38.

(2) For brakes on which a heat stack kit having an ''R'' after the P/N (i.e., 5010322-2R, also called short stacks) have been installed: Operators must use the maximum wear pin length which is based on the measured wear of the thinnest disk in the stack and is specified on the Airworthiness Tag that accompanies each heat stack kit (i.e., for airplanes having brakes with short stacks installed, do not use either the standard maximum wear pin measurements or the alternate brake wear measurements specified in either Table 1 or Table 2 of this AD to determine brake wear.)

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear pin limits specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable, into the FAA-approved maintenance program and comply with these measurements thereafter. If any brake has measured wear beyond the maximum wear limits specified in those paragraphs, prior to further flight, replace it with a brake that is within the wear limits specified in the applicable paragraph.

(1) For Model F28 Mark 0100 and 0070 series airplanes:

TABLE 3.—MAXIMUM SETTINGS—NON-REFURBISHED BRAKES (ORIGINAL EQUIPMENT MANUFACTURER)

Brake unit part number	Maximum wear pin measurement	Alternate brake wear measurement	Measure in accordance with aircraft braking systems (ABS) component maintenance manual with illustrated parts list number
5008132–2	1.85″ (47 mm)	4.00″ (101.6 mm)	AP–652(32–43–77) CMM w/IPL
5008132–3	1.85″ (47 mm)	4.00″ (101.6 mm)	AP–652(32–43–77) CMM w/IPL
5008132–4	2.10″ (53.3 mm)	4.25″ (107.9 mm)	AP–652(32–43–77) CMM w/IPL
5008132–5	2.10″ (53.3 mm)	4.25″ (107.9 mm)	AP–652(32–43–77) CMM w/IPL
5008132–6	2.10″ (53.3 mm)	4.25″ (107.9 mm)	AP–652(32–43–77) CMM w/IPL
5008132–7	2.10″ (53.3 mm)	4.25″ (107.9 mm)	AP–652(32–43–77) CMM w/IPL
5008132–8	2.20″ (55.9 mm)	4.35″ (110.5 mm)	AP–652(32–43–77) CMM w/IPL

TABLE 4.—MAXIMUM SETTINGS—REFURBISHED BRAKES (R11–3 ON BRAKE HOUSING)

Brake unit part number	Maximum wear pin measurement	Alternate brake wear measurement	Measure in accordance with aircraft braking systems (ABS) Component maintenance manual with illustrated parts list
5008132–2	1.85'' (47 mm)	4.00'' (101.6mm)	AP–625 (32–43–77) CMM w/IPL
5008132–3	1.85'' (47 mm)	4.00'' (101.6mm)	AP–625 (32–43–77) CMM w/IPL
5008132–4	2.20'' (55.9 mm)	4.35'' (110.5mm)	AP–625 (32–43–77) CMM w/IPL
5008132–5	2.20'' (55.9 mm)	4.35'' (110.5mm)	AP–625 (32–43–77) CMM w/IPL
5008132–6	2.20'' (55.9 mm)	4.35'' (110.5mm)	AP–625 (32–43–77) CMM w/IPL
5008132–7	2.20'' (55.9 mm)	4.35'' (110.5mm)	AP–625 (32–43–77) CMM w/IPL
5008132–8	2.20'' (55.9 mm)	4.35'' (110.5 mm)	AP–625 (32–43–77) CMM w/IPL

(2) For Model F28 Mark 0100 and 0070 series airplanes having a brake unit with P/N 5011809, A5011809, or B5011809: The maximum wear pin measurement is 2.50'' (63.5 mm), with an alternate brake wear measurement of 4.35'' (110.5 mm). The measurement shall be done in accordance with Aircraft Braking Systems (ABS) AP–747 (32–43–65) Component Maintenance Manual (CMM) with Illustrated Parts List (IPL).

(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 6: 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.

Issued in Renton, Washington, on February 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–3000 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–188–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes, and Model MD–88 and MD–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes, and Model MD–88 and MD–90 airplanes. This proposal would require a one-time measurement of the length of the oxygen mask lanyards of the passenger service unit (PSU), and modification of lanyards that are longer than the proper length. This proposal is prompted by a report that the length of the oxygen mask lanyards of the PSU were found to be too long, apparently due to improper installation during production. The actions specified by the proposed AD are intended to ensure that the length of these oxygen mask lanyards is correct, so that the oxygen canister will be properly activated when needed during an emergency.

DATES: Comments must be received by April 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–188–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–188–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–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during an inspection of an oxygen installation on a Model MD–90 airplane, the length of the oxygen mask lanyards of the passenger service unit (PSU) was found to be too long. The cause has been attributed to the apparent improper installation of the oxygen mask lanyards of the PSU during production of the airplane. An oxygen mask lanyard that is too long, if not corrected, may not activate the oxygen canister and, subsequently, could render the oxygen mask inoperative during an emergency.

The oxygen mask installations on certain Model DC–9–80 series airplanes and Model MD–88 airplanes are identical to those installed on certain Model MD–90 airplanes. Therefore, all of these models may be subject to the same unsafe condition.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD90–35–001, dated August 29, 1995 (for Model MD–90 airplanes), and McDonnell Douglas Service Bulletin MD80–35–022, dated August 29, 1995 (for Model DC–9–80 series airplanes and Model MD–88 airplanes). These service bulletins describe procedures for a one-time measurement of the length of the oxygen mask lanyards of the PSU from the loop on the firing pin or aluminum ring to the mask. These service bulletins also describe procedures for modification of oxygen mask lanyards that are found to be longer that the proper length. The modification involves correcting the length of the lanyard by retying the knot of the lanyard and trimming the excess. Accomplishment of the modification will minimize the possibility of an inoperative oxygen mask during an emergency.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, for Model DC–9–80 series airplanes and Model MD–88 airplanes, a one-time measurement of the length of the oxygen mask lanyards of the PSU, and modification, if necessary. For Model MD–90 airplanes, the proposed AD would require modification of the oxygen mask lanyards of the PSU. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 1,200 McDonnell Douglas Model DC–9–80 series airplanes, Model MD–88 airplanes, and MD–90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 650 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes on which inspection of the lanyard is required, it would take approximately 81 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $4,860 per airplane.

For airplanes on which modification of the lanyard is required, it would take approximately 121 work hours per airplane to accomplish the proposed

modification at an average labor rate of $60 per work hours. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $7,260 per airplane.

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 adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–188–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes, having manufacturer's fuselage numbers 924 through 1094 inclusive, and 1095 through 2113 inclusive; and Model MD–90 airplanes, having manufacturer's fuselage numbers 2094 through 2098 inclusive, and 2100; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 as indicated, unless accomplished previously.

To ensure that oxygen mask lanyards of the PSU are not too long in length; excessive length lanyards may not activate the oxygen canister and could render the oxygen mask inoperative during an emergency, accomplish the following:

(a) For Model DC–9–80 series airplanes and Model MD–88 airplanes, having manufacturer's fuselage numbers 1095 through 2113 inclusive; and Model MD–90 airplanes: Within 2 years after the effective date of this AD, perform a one-time measurement of the length of the oxygen mask lanyards of the passenger service unit (PSU) from the loop on the firing pin or aluminum ring to the mask, in accordance with McDonnell Douglas Service Bulletin MD80–35–022, dated August 29, 1995 (for Model DC–9–80 series airplanes and Model MD–88 airplanes), or McDonnell Douglas Service Bulletin MD90–35–001, dated August 29, 1995 (for Model MD–90 airplanes), as applicable.

(1) If the length of all oxygen mask lanyards is found to be within the limits specified in the applicable service bulletin, no further action is required by this paragraph.

(2) If the length of any oxygen mask lanyard is found to exceed the limits specified in the applicable service bulletin, prior to further flight, modify that oxygen mask lanyard of the PSU in accordance with the applicable service bulletin.

(b) For Model DC–9–80 series airplanes having manufacturer's fuselage numbers 924 through 1094 inclusive: Within 2 years after the effective date of this AD, modify the oxygen mask lanyards of the PSU in accordance with McDonnell Douglas Service Bulletin MD80–35–022, dated August 29, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on February 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–2999 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950222055–5294–02]

Regulation To Prohibit the Attraction of White Sharks in the Monterey Bay National Marine Sanctuary; Clarification of Exception To Discharge Prohibition

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration proposes to amend the regulations governing the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to prohibit the attraction of white sharks in the nearshore (seaward to three miles) areas of the Sanctuary. This proposed rule responds to the comments received in response to an Advance Notice of Proposed Rulemaking on the subject of attracting sharks in the Sanctuary. The proposed prohibition is to ensure that Sanctuary resources and qualities are not adversely impacted and to avoid conflicts among various users of the Sanctuary. The proposed rule would also clarify the ''traditional fishing'' exemption to the discharge prohibition in the existing regulations, and add definitions of ''fishing'' and ''traditional fishing.''

DATES: Comments must be received by March 13, 1996. A public hearing on this proposed rule will be held at a time and location which will be published in a separate document.

ADDRESSES: Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones and northern portion of the Monterey Bay National Marine

Sanctuaries, Ft. Mason, Building 201, San Francisco, California 94123, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland 20910. Comments received will be available for public inspection at both addresses.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at (415) 556–3509 or Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M; previously cited as 15 CFR Part 944). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

In January 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS during the time of year white sharks come to feed. SRD received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS. NOAA's Sanctuaries and Reserves Division (SRD), with assistance from the MBNMS Advisory Council, and a number of interested parties, identified a number of concerns regarding the subject of attracting white sharks within the MBNMS. NOAA subsequently issued an advance notice of proposed rulemaking on this issue to invite submission of written information, advice, recommendations and other comments. The following concerns have been identified throughout NOAA's review of this issued: (1) Behavioral changes in the attracted species (e.g., feeding and migration); (2) increased risk of attack to other Sanctuary users (e.g., surfers, windsurfers, and swimmers), increased user conflicts in the area of the activity, and potential health hazards of the activity; and (3) adverse impacts to other Sanctuary resources and qualities (e.g., disruption of the ecosystem, aesthetic impacts). While California state law makes it unlawful to directly take (e.g., catch, capture, or kill) white sharks in state waters, it does not address attraction of white sharks. Nor does any Federal law or regulation address attracting white sharks in the waters off California.

There is currently no MBNMS regulation specifically addressing attracting white sharks in the MBNMS. There is a general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary (15 CFR 922.132(a) (2)). The discharge and deposit prohibition contains an exception for, *inter alia,* the discharge or deposit of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary.'' While fishing activities in the Sanctuary are subject to various Federal and state regulations, traditional fishing activities are not regulated as part of the Sanctuary regulatory regime. Sanctuary regulations that could indirectly restrict traditional fishing operations were specifically crafted to avoid doing so. Thus, while fishing vessels are subject to the general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary, the exception for the discharge or deposit of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary'' was designed to prevent the prohibition from indirectly restricting the conduct of traditional fishing operations. However, it was not intended to allow the discharge or deposit of ''fish, fish parts, chumming materials or bait'' at any time or in conjunction with any activity, as long as the discharge or deposit is of the same material ''used in or resulting from'' traditional fishing operations in the Sanctuary. Rather, it was intended solely to allow such discharges or deposits in the course of traditional fishing operations. Accordingly, NOAA proposes to amend this exception to make it explicitly clear that it applies only to such discharges or deposits in the conduct of traditional fishing activities.

On February 28, 1995, SRD issued an Advance Notice of Proposed Rulemaking (ANPR; 60 FR 10812), an optional step in the rulemaking process, to inform the public that the MBNMS was considering restricting or prohibiting attracting sharks within the Sanctuary and to invite submission of written information, advice, recommendations and other comments. The comment period for the ANPR ended on April 14, 1995. SRD received 302 letters and several petitions. Further, SRD held a public hearing in Santa Cruz, California on March 22, 1995, where 35 oral comments were received. Most comments (over 90%) favored restricting or prohibiting chumming for or otherwise attracting white sharks in some fashion in the MBNMS.

Based on available information, including that received in response to the ANPR, SRD is proposing to prohibit attracting white sharks in the nearshore areas of the MBNMS.

II. Comments and Responses

The following is a summary of comments received on the ANPR and NOAA's responses.

(1) *Comment:* White sharks are already present in the Año Nuevo region and other areas of the Sanctuary and shark attraction activities make no difference to their presence.

Response: NOAA agrees that white sharks are present in the Año Nuevo region and other nearshore areas of the MBNMS in the autumn and winter seasons. However, NOAA is concerned that artificial (i.e., human induced) attraction activities may draw more white sharks to a specific location than might be present naturally and also cause them to remain in the area longer. Researchers have documented that chumming can draw sharks from up to 5 km (3.1 miles) away and cause them to remain up to twelve hours after chumming has ceased.

(2) *Comment:* Artifically attracting white sharks causes short-term behavioral changes in the attracted or associated species, and may cause long-term changes.

Response: NOAA agrees. Research clearly supports that using attractants (e.g., chum) causes short-term behavioral changes in white sharks. This is further evidence by the fact that artificial shark attraction methods have been successful in bringing sharks into a targeted area for divers in cages to view. Both direct and indirect (e.g., more white sharks remain in a particular area longer; a situation which could alter predator-prey relationships) behavioral changes can result from attracting white sharks in nearshore waters of the Sanctuary. In addition, while few studies have been conducted on the long-term impacts of artificial attraction on white sharks, scientific studies and observations indicate that using human manipulation to attract other species of wild organisms has resulted in behavioral changes.

A report prepared by the Research Activity Panel (RAP Report), a working group of the Sanctuary Advisory Council, indicates that sharks are known to be drawn to a specific area based on sensory (hearing and olfactory) changes in their environment. Some sharks have been trained to respond to

both of these stimuli, but the success of that training depends on sufficient frequency. Evidence strongly indicates white shark affinity to the Farallon Islands and Año Nuevo Island areas due to the frequency that they are found in these areas and the continued seasonality of their use of these areas. It has been found that individual white sharks often feed at the same location at similar times during successive years.

It has also been found that white sharks at Dangerous Reef in Southern Australia show a clear tendency to revisit the places where they were previously observed, suggesting a relatively high degree of site attachment. The white sharks exhibited an ''island patrolling'' pattern which may represent a home-ranging pattern. Shark feeding behavior seems to be indiscriminate; white sharks may take learned ''prey-shaped'' items as long as the target ''matches'' a known prey item (e.g., a surfer lying prone on a surfboard has a silhouette similar to a seal). Other findings from studies at Dangerous Reef suggest that white sharks select their prey by shape. However, at the Farallon Islands, it has been documented that white sharks select prey of various shapes and sizes.

The RAP Report found that sharks have been observed to alter their feeding behavior based on external clues (e.g., learned behavior). The Fisheries Division of the South Australia Department of Primary Industries has recommended that legislation be enacted to prohibit chumming at Dangerous Reef because of changes in the white shark's behavior resulting from chumming activities. Moreover, the Great Barrier Reef Marine Park Authority (Authority) has a policy that permits will not be issued for the feeding or attracting of sharks, identifying reasons similar to those NOAA has regarding its proposal to prohibit attraction of white sharks in the nearshore areas of the Sanctuary, including change in behavior caused by the activity.

The California legislature enacted a law prohibiting the direct take of white sharks in California waters due to their importance to the marine ecosystem. Further, research indicates that the California population of white sharks is small, that the white sharks have low reproductive rates, and that they have a slow rate of growth to maturity. Consequently, any disruption to the species can have a profound long-term adverse impact. This was evidenced in 1982, when a fisherman killed four adult white sharks off of the Farallon Islands. Researchers documented a significant decline in the occurrence of white sharks attacks on prey species (e.g., seals and sea lions) in that area between 1983–1985. This is significant because research indicates that white shark predation takes approximately 8–10% of the local elephant seal populations and an unknown percentage of California sea lion populations; this is enough of a predation rate to maintain a natural balance in fish and seabird populations.

Concern about the feeding of or attracting of other species of wild organisms has been addressed in other areas. Dolphin-feeding cruises in the Gulf of Mexico is one example of the use of attractants that has been determined to cause significant negative behavioral changes in marine mammals. NOAA's National Marine Fisheries Service (NMFS) banned dolphin-feeding cruises in 1991 based on the scientific risks to both dolphins and humans. The ban was imposed based on evidence that feeding cruises exposed wild animals to disease and physical danger, and could alter their migratory and feeding behavior. The U.S. Court of Appeals for the Fifth Circuit upheld the ban in 1993, *Strong* v. *U.S.*, 5 F.3d 905 (5th Cir. 1993). the Court agreed with NMFS that scientific evidence supported that feeding activities disturbs normal behavior and, therefore, it was reasonable for the agency to restrict or prohibit the feeding of wild dolphins.

Other changes in animal behavior, resulting from people altering the natural feeding methods or locations, have been documented, including changes in prey items, location of feeding, and changes in behavioral patterns. Examples include feeding of bison in Yellowstone National Park, feeding of bear and deer in Parks, polar bears at Churchill, Canada, and feeding of fish in Hawaii. In all cases, the ensuing behavioral changes forced regulators to prohibit feeding activities to protect the animals and the people feeding them. In the Hawaii example, the feeding resulted in increases in selected fish species and thus affected natural community structure on the reefs. While not directly applicable to white sharks, these examples show that longer-term behavioral changes can and do result from using human-manipulated means to attract (in these instances, feed) wild organisms.

(3) *Comment:* Artificially attracting white sharks has adverse impacts on Sanctuary resources in general.

Response: NOAA agrees that the potential exists to cause harm to Sanctuary resources and qualities from white shark attraction activities. Altering white shark behavior can result in disruption of the local population and the associated ecosystem. Further, attraction of white sharks in nearshore areas can result in adverse impacts to the aesthetic and recreational qualities for which the Sanctuary was designated.

(4) *Comment:* Chum material is composed of the same natural products already present in the waters and, therefore, will have no adverse impacts.

Response: NOAA disagrees. While chum has traditionally been documented to consist of live fish, fish blocks, and fish blood, there have been some instances where the use of pinniped parts, tuna oil, sheep parts and blood, pig parts and blood, and horse parts and blood have been used to take sharks and, in a few instances, to attract sharks for photography and viewing by caged divers (especially white sharks). It has been suggested that chum, especially non-marine chum, could act as a vector for potentially harmful bacteria and viruses to both marine mammals and humans. Regardless of the content of the chum or type of attractant, however, SRD has concerns about the conduct of activities to attract white sharks in the nearshore areas of the Sanctuary due to the resulting change in behavior of the white shark, the user conflict created by the activity, and impact to associated Sanctuary resources and qualities (e.g., ecological, aesthetic, recreational).

(5) *Comment:* Methods other than chumming have been used to attract sharks, and therefore, need also to be considered in the rulemaking.

Response: NOAA agrees. It has been reported to NOAA that some researchers and commercial entrepreneurs have experimented (with some success) using sound as a means of artificially attracting sharks. Other researchers have also experimented with electrical fields and visual cues as a means of attracting sharks. While such methods may reduce the adverse aesthetic impacts (e.g., a slick produced by chumming), and eliminate any risk of introduction of pathogens into the marine environment, other risks created by artificially attracting white sharks in nearshore areas remain (e.g., behavior modification and user conflict). Therefore, NOAA believes that its regulation must be broad enough to encompass means of attraction other than the use of chum.

(6) *Comment:* Artificially attracting sharks in nearshore areas creates a risk to other users of those areas.

Response: NOAA agrees. NOAA considers that even a single instance of white shark attraction conducted near an area where other people are recreating in the water can increase the

risk of harm to those individuals from white shark attack. While the exact potential for increased risk is difficult to assess, and may be an area for further research, most experts on shark biology agree that enhanced risk is probable where attraction is occurring. The American Elasmobranch Society, whose members include professional researchers studying sharks and rays, conducted a survey of its members in 1994 which included questions on shark baiting and the protection of sharks. One of the questions asked was ''In regard to shark-diving operations which involve regular baiting, is there a cause for concern (re: shark attack) if such shark diving operations are conducted relatively close to bathing or surfing beaches?'' The response resulted in 46 percent yes, 48 percent it depends, and 5 percent no answer. The Great Barrier Marine Park Authority also cited risks to other users as one of the reasons it adopted a policy not to issue permits for the feeding or attracting of sharks. The Authority indicated that if the policy had not been adopted, then shark attracting activities would have been prohibited through regulation.

Therefore, while people that spend time in the water in areas near those known to be inhabited by white sharks are exposed to the possibility of dangerous interactions, the use of attractants in areas frequented by people may increase the likelihood of these interactions.

(7) *Comment:* Anyone who surfs or dives near areas with high concentrations of white sharks such as Año Nuevo is doing so in a dangerous environment to begin with, and attracting white sharks will not make it any more dangerous.

Response: NOAA recognizes that nearshare areas such as Año Nuevo have a higher incidence of white shark attacks than other areas of the coast. As discussed previously, however, NOAA believes that artificially attracting white sharks has the potential to increase the threat beyond that which may naturally exist within a given area.

(8) *Comment:* Artificial attraction of white sharks disrupts established recreation and human use patterns and is therefore an incompatible use.

Response: NOAA agrees. The use of attractants such as chum to attract white sharks in the nearshore areas of the Sanctuary adversely impacts the aesthetic and recreational qualities for which, in part, the Sanctuary was designed, and creates a conflict among other users of the area. For example, regardless of the method used to attract white sharks, users of the nearshore areas are subject to greater potential risk of harm as a result of the conduct of this activity. Further, the chum slick may cause not only a potential health hazard, but also adversely impacts the aesthetics of the area. Consequently, NOAA has determined that white shark attraction in the nearshore areas of the Sanctuary is generally incompatible with other uses of these areas.

(9) *Comment:* Exposure to white sharks through cage diving promotes better conservation of sharks in general and improves the public's attitude towards (and perception of) sharks.

Response: NOAA does not believe that attracting white sharks for viewing purposes without an associated, permitted research protocol provides a public benefit for the species, the participants, or other Sanctuary resources or qualities. NOAA also believes promotion of shark conservation is effectively addressed, in part, by retaining some sharks in aquaria for viewing. Within the area of the MBNMS, two aquaria exist (Steinhart Aquarium in San Francisco and the Monterey Bay Aquarium in Monterey), both of which are reowned for their skill and research in captive shark husbandry. Therefore, sufficient opportunity exists for members of the public who wish to view live sharks. SRD recognizes that there are few, if any, white sharks in capacity. For individuals that wish to observe live white sharks, therefore, one of the only ways to do so is to observe them in their natural environment. The regulation SRD is proposing does not restrict persons from SCUBA diving using shark cages in the Sanctuary. The regulation prohibits only the use of attractants that can artificially alter white shark behavior, create user conflict, and adversely impact other Sanctuary resources and qualities. This is the primary reason the proposed regulation is tailored specifically to attraction, and is not a broader prohibition against the ''taking'' (broadly defined in the existing Sanctuary regulations) of white sharks that could encompass non-attraction viewing.

(10) *Comment:* Artficial shark attraction is the only viable means for viewing white sharks in the wild. If a regulatory ban is promulgated, it would mean the end of commercial white shark viewing in the Sanctuary.

Response: NOAA agrees that white sharks may essentially only be seen live in the wild. However, there are other means by which the majority of the non-diving public can learn about white sharks (e.g., research and educational media). While banning white shark attraction in nearshore areas of the Sanctuary would impact commercial white shark viewing activities, NOAA believes that in assessing the potential risks to the Sanctuary resources and qualities, and to Sanctuary users, such a restriction is necessary. Further, by restricting only attraction of white sharks in the nearshore areas, NOAA believes the regulation is reasonable in relation to the risks and concerns created by the activity. While a prohibition of white shark attraction in the nearshore areas of the Sanctuary would impact commercial shark attraction operations, the number of commercial operators presently engaging in this activity is small. Further, white shark attraction is not likely the sole source of business for such commercial operators because white sharks only inhabit the nearshore areas during the fall-winter season. Moreover, as discussed in the previous response, commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. Finally, many of the concerns about the impact of attracting white sharks in the nearshore areas do not appear to apply in deeper waters outside three miles where other species of shark (e.g., blue) are found because: other species of shark appear to not be as susceptible as white sharks to disruption from adverse impacts; and white sharks, their prey species, and people are not localized or concentrated outside nearshore waters of the MBNMS.

(11) *Comment:* Shark chumming has been taking place in the Monterey Bay area for quite some time, and should therefore be considered a ''traditional fishing'' method.

Response: NOAA disagrees. There is evidence that a number of fisheries, including certain shark fisheries, used chumming methods for at least the past twenty years, though not in any sustained or continuous fashion. However, the white shark attraction activities conducted in the nearshore areas for recreational purposes are not traditional fishing operations. In fact, such activities are not any type of fishing operation. Moreover, white sharks have no significant commercial value, and there is no and there never has been a commercial white shark fishery in the Monterey Bay area waters. In addition, California state law now generally prohibits fishing for, or retention of, white sharks within California waters. NOAA believes that a regulation which would effectively prohibit the attraction of white sharks is a logical extension of, and consistent with, the State law.

(12) *Comment:* The definition of traditional fishing needs to be clarified.

Response: NOAA agrees. The term was not defined in the existing regulations and NOAA is proposing to amend the regulations to define the term.

(13) *Comment:* If a ban on white shark attraction is put in place, legitimate scientific research on white sharks using artificial attraction will not be allowed in the sanctuary.

Response: The MBNMS regulations provide that permits may be issued to conduct certain activities, including those that will further research related to Sanctuary resources and qualities. In assessing whether to issue a research permit, the MBNMS/SRD considers a number of factors including: the end value of the activity; the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and duration of its effects; and the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity. Further, in order to issue a permit, the MBNMS/SRD must find that the activity will have only negligible short-term effects on Sanctuary resources and qualities. Sections 922.48 and 922.133 of 15 CFR provide the application procedures and issuance criteria for Sanctuary permits. Under 15 CFR 922.49 and 922.134, NOAA may also authorize a research permit issued by the California Department of Fish and Game.

Should SRD allow, via permit or authorization, the conduct of white shark attraction for legitimate scientific research, stringent conditions will be required to protect Sanctuary resources and qualities and to minimize user conflict. For example, SRF would likely require that any physical attractants be free of infectious pathogens and be restricted to naturally occurring oceanic substances (e.g., no parts of terrestrial organisms), and be limited to no more than necessary to conduct the research; that the researcher fly the internationally designated danger flag, the U or Uniform Flag, along with the NOAA research flag while conducting research activities; that the researcher make radio contact with any vessel coming within the vicinity of the activity; and that the researcher provide local public notice prior to the conduct of research activities.

(14) *Comment:* A restriction or prohibition against attracting white sharks should not be Sanctuary-wide, but rather should apply only to certain areas.

Response: NOAA agrees. The concerns raised by this activity are unique to nearshore areas due to the combined concentration of white sharks, associated species (e.g., pinnipeds), and people who also use and enjoy the nearshore areas of the Sanctuary. These concerns are not present in offshore areas of the MBNMS where this combination of factors does not exist. Consequently, NOAA believes that by prohibiting the attraction of white sharks within three miles from the coast (i.e., state waters; 16% of the Sanctuary), the identified concerns and risks will be fully addressed.

III. Summary of Regulations

Three amendments to the MBNMS regulations are proposed in this rulemaking.

1. Attraction of White Sharks

The first amendment is the addition to 15 CFR 922.132(a) of a prohibition against attracting, or attempting to attract, any white shark in California State waters (three miles seaward of mean high tide) in the Sanctuary. Section 922.131 would also be amended by adding a definition of ''attract or attracting,'' defined as the conduct of any activity that lures by using food, bait, chum or any other means. As discussed above in the response to comments on the ANPR, this regulation is necessary to protect the white shark and other Sanctuary resources (e.g., pinnipeds); to minimize user conflict in the nearshore areas of the Sanctuary; and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. Concentration of white sharks, associated species, and people make nearshore areas of the Sanctuary uniquely susceptible to adverse impacts from attracting white sharks in such areas. The proposed regulation is narrowly tailored to attraction of white sharks in order to complement existing California law that prohibits the direct take of white sharks in California waters, and so as not to prohibit divers from viewing white sharks in their natural state without the use of attractants.

2. Discharge Regulations

Section 922.132(a)(2)(i) prohibits the discharging or depositing, from within the boundary of the Sanctuary, any material or other matter. Section 922.132(a)(2)(ii) prohibits the discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality. There are five exceptions to these discharge prohibitions, one of which is the discharge of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary'' (15 CFR 922.132(a)(2)(i)(A)). This exception is proposed to be amended to make it explicitly clear that it applies only to such discharges in the actual conduct of traditional fishing activities in the Sanctuary. Accordingly, the exemption would be amended to read ''fish, fish parts, chumming materials or bait produced and discarded incidental to and during traditional fishing operations conducted in the Sanctuary.'' Thus, it will be clear that the use of identical materials during the conduct of other activities does not fall within the exception to the discharge regulations and is prohibited.

3. Traditional Fishing

There is presently no definition of traditional fishing in the MBNMS regulations. This term appears in four of the regulatory prohibitions. It was intended and has always been interpreted by NOAA to mean fishing using lawful commercial or recreational methods used within the Sanctuary prior to its designation. In order to ensure that there are no uncertainties as to the meaning of the term, NOAA is proposing to add to 15 CFR 922.131 definitions of ''fishing'' and ''traditional fishing'' to the Sanctuary regulations. The term ''fishing'' is proposed to be defined as: (i) The catching or harvesting of fish; or (ii) the attempted catching or harvesting of fish. The term ''traditional fishing'' is proposed to be defined as: ''fishing using a lawful commercial or recreational fishing method used within the Sanctuary prior to its designation (September 18, 1992).'' Addition of these definitions would provide clear understanding of the scope of certain exceptions to the regulatory prohibitions.

IV. Miscellaneous Rulemaking Requirements

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

NOAA has concluded that this regulatory action is not expected to have

a significant economic impact on a substantial number of small entities, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. A prohibition against white shark attraction in the nearshore areas of the Sanctuary would not have a significant economic impact on a substantial number of small entities because: the number of commercial operators presently engaging in this activity is small; white shark attraction is not likely the sole source of business for such commercial operators because white sharks only inhabit the nearshore areas during the fall-winter season; and commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 1, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding three definitions in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Attract or attracting means the conduct of any activity that lures by using food, bait, chum or any other means.

* * * * *

Fishing means: (1) The catching or harvesting of fish; or (2) The attempted catching or harvesting of fish.

* * * * *

Traditional fishing means fishing using a lawful commercial or recreational fishing method used within the Sanctuary prior to its designation (September 18, 1992).

3. Section 922.132 is amended by revising paragraph (a)(2)(i)(A), and adding new paragraph (a)(10) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(2)(i) * * *

(A) Fish, fish parts, chumming materials or bait produced and discarded incidental to and during traditional fishing operations in the Sanctuary.

* * * * *

(10) Attracting or attempting to attract any white shark in California state waters (3 miles seaward of mean high tide) in the Sanctuary.

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[FR Doc. 96–2686 Filed 2–9–96; 8:45 am]

BILLING CODE 3510—08—M

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission (Commission or FTC) has completed its regulatory review of the Rules and Regulations under the Textile Fiber Products Identification Act (Textile Rules). Pursuant to that review, the Commission concludes that the Rules continue to be valuable to both consumers and firms. The regulatory review comments suggested various substantive amendments to the Rules. The Commission has considered these proposals and other proposals that it believes merit further inquiry. The Commission seeks comment on whether it should amend the Textile Rules to: (1) allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a textile product, without requiring disclosure of the functional significance of the fiber, as presently required by Textile Rule 3(b); (2) eliminate the requirement of Textile Rule 16(b) that the front side of a cloth label, which is sewn to the product so that both sides of the label are readily accessible to the prospective purchaser, bear the wording ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label; (3) allow for a system of shared information for manufacturer or importer identification among the North American Free Trade Agreement (NAFTA) countries; (4) add a provision to Textile Rule 20 specifying that a Commission registered identification number (RN) will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted; (5) allow the use of abbreviations for generic fiber names; (6) allow the use of abbreviations and symbols in country of origin labeling; and (7) allow the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization. In addition, the Commission seeks comment on the possible resolution of apparent conflict between the Commission's country of origin disclosure requirements and new U.S. Customs Service regulations pursuant to the Uruguay Round Agreements Act of 1994.

DATES: Written comments will be accepted until May 13, 1996.

ADDRESSES: Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. Submissions should be marked ''Rules and Regulations under the Textile Act, 16 CFR Part 303—Comment.'' If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890 or Edwin Rodriguez, Attorney, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3147.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Textile Fiber Products Identification Act (Textile Act), 15 U.S.C. 70 *et seq.*, requires marketers of covered textile products to mark each product with (1) the generic names and percentages by weight of the constituent fibers present in the product; (2) the name under which the manufacturer or other responsible company does business, or in lieu thereof, the RN issued to the company by the Commission; and (3) the name of the country where the product was processed or manufactured. The Textile Act also contains advertising and recordkeeping provisions. Pursuant to section 7(c) of the Act, 15 U.S.C. 70e(c), the Commission has issued implementing regulations, the Textile Rules, which are found at 16 CFR Part 303.

As part of the Commission's on-going regulatory review of all its rules, regulations, and guides, on May 6, 1994, the Commission published a Federal Register notice (FRN), 59 FR 23646, seeking public comment on the Textile Rules. The FRN solicited comments about the overall costs and benefits of the Rules and their regulatory and economic impact. The FRN also sought comment on what changes in the Rules would increase the benefits of the Rules to purchasers and how those changes would affect the costs the Rules impose on firms subject to their requirements. The Commission further stated that Textile Rules 10, 21, 32, and 45 would be amended to comply with ''metrication'' mandates if the Commission decided to retain those rules in their current form after the regulatory review.[1] The deadline for submission of comments was extended twice, on July 7, 1994 and September 12, 1994. The final deadline for comments was October 15, 1994.

II. Regulatory Review and Proposed Amendments

A. Support for the Textile Rules

The Commission received twenty-eight comments in response to the FRN. The comments were submitted by trade associations[2] and companies[3] subject to the Textile Act and Rules. In addition, one comment was submitted by an industry-wide committee formed to address issues concerning the harmonization of textile regulations among the NAFTA countries.[4]

Although no comments were received from consumers or consumer groups, it is clear from the Commission's experience that consumers benefit directly from the Rules and consider the mandated disclosures material in making purchase decisions. Ten comments explicitly express support for the Textile Rules as a whole[5] because the Rules protect consumers from deceptive fiber claims and provide them with valuable information about the fiber content of apparel, allowing them to make educated product comparisons and purchasing decisions.[6] The comments do not identify any costs imposed by the Rule on consumers.[7]

In addition, the comments show that the Rules are valuable to manufacturers and firms. They allow firms to distinguish their products from others in the marketplace based on the products' fiber content.[8] They improve the credibility of firms and their products by assuring consumers that the products they are purchasing will meet specific standards and consumer tastes.[9] The Rules also ''maintain the integrity of fiber type information from the fiber supplier to the textile manufacturer to the apparel manufacturer to the consumer.''[10] Although the Rules impose labeling and packaging costs,[11] they are small and have become an accepted part of doing business in the textile industry.[12] The commenters consider the costs of compliance to be minimal and the benefits to companies and consumers to be tangible and great.

In short, it is clear that the implementing regulations enjoy the backing of subject companies and have become an accepted part of business at all levels of manufacture, distribution, and sales. The Commission has decided, however, to seek additional comment on possible amendments to the Rules.

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[1] The regulatory review comments do not suggest any change to Rules 10, 21, 32, and 45, and the Commission does not propose any substantive changes to these Rules. The Commission has decided to retain these Rules in their present form. Therefore, in a separate notice, the Commission announces the final amendments to Rules 10, 21, 32, and 45 to include metric equivalents beside the inch/pound unit measurements in those Rules, as required by Executive Order 12770 of July 25, 1991 (56 FR 35801, July 29, 1991) and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205b).

[2] National Knitwear & Sportswear Association [NKSA] (1), National Association of Hosiery Manufacturers [NAHM] (2), American Textile Manufacturers Institute [ATMI] (3), Cordage Institute [CORD] (4), National Retail Federation [NRF] (5), American Fiber Manufacturers Association, Inc. [AFMA] (7), American Textile Manufacturers Institute [ATMI] (10), Ross & Hardies, on behalf of United States Association of Importers of Textiles and Apparel [USA-ITA] (11), American Apparel Manufacturers Association [AAMA] (15), Liz Claiborne, Inc. and Labeling Committee, Industry Sector Advisory Committee on Wholesaling and Retailing [ISAC 17] (17).

[3] Warren Featherbone Company [WFC] (6), Dan River Inc. [DR] (8), Ruff Hewn [RUFF] (9), Gap, Inc. [GAP] (12), Fieldcrest Cannon, Inc. [FIELD] (13), Fruit of the Loom [FRUIT] (14), Wemco Inc. [WEMCO] (18), Sara Lee Knit Products [SARA] (19), Horace Small Apparel Company [HORACE] (20), Perry Manufacturing Company [PERRY] (21), Milliken & Company [MILL] (22), Cranston Print Works Company [CRAN] (23), Angelica Corporation [ANGEL] (24), Russell Corporation [RUSS] (25), Haggar Apparel Company [HAGGAR] (26), Capital Mercury Shirt Corp. [CAP] (27), Biderman Industries Corporation [BIDER] (28).

[4] Trilateral Labeling Committee [TLC] (16). WFC (6), RUFF (9), WEMCO (18), SARA (19), ANGEL (24), RUSS (25), HAGGAR (26), CAP (27), and BIDER (28) explicitly adopt or endorse the recommendations of TLC (16), and other comments appear to track TLC's recommendations closely.

[5] NKSA (1) p.1, NAHM (2) p.1, ATMI (3) p.1, CORD (4) p.2, DR (8) p.1, ATMI (10) p.1, FIELD (13) p.1, FRUIT (14) p.1, PERRY (21) p.1, MILL (22) p.1. These comments were submitted by companies covered by the Rules, but they express the belief that the Rules help consumers.

[6] NAHM (2) states, at p.1, that the regulations should be retained ''because they provide a framework for fiber content disclosure, labeling, country-of-origin clarification, and provisions for guarantees, all of which protect manufacturers, buyers, and retail consumers.'' NKSA (1) states, at p.1, that the Rules serve an important and useful purpose for consumers who may not be aware of the various fibers in the multi-fiber blends that have become common in the marketplace. CORD (4) states, at p.2, that the Rules help purchasers ''select a product best suited for a specific application and reduce the potential for unsafe use and danger to life and property.'' PERRY (21) states, at p.1, that the Rules are ''both necessary and desirable if we are to have orderly trade within this hemisphere.''

[7] NAHM (2) states, at p.1, that the Rules impose costs on consumers, but does not identify what the costs are. The comment states that ''the assurances offered by the Rules to purchasers far outweigh the costs associated with fiber content disclosure on labeling and the use of guarantees.'' ATMI (10) states, at p.1, that it ''has no knowledge of additional imposed costs to the consumer because of the rules.''

[8] NKSA (1) p.1.

[9] NAHM (2) p.2.

[10] ATMI (3) p.1. See also DR (8) p.1; ATMI (10) p.1, MILL (22) p.2.

[11] NAHM (2) p.2. ATMI (3) states, at p.1, that ''[t]here are minimal costs associated with the manufacture of the label, its attachment to the textile product, and costs carried by the manufacturer to maintain records.''

[12] NKSA (1) p.1, ATMI (3) pp.1–2, DR (8) p.1, ATMI (10) p.5, FIELD (13) p.6, MILL (22) p.6. ATMI (3) states, at pp.1–2, that ''[p]rior to the rules, textile mills typically kept records of fiber content and performed fiber identification tests to certify that fiber being supplied to the mill was indeed what the supplier stated. These costs and practices have become a generic part of textile business operations. The rules only add the cost of a consumer label.''

B. Proposals for Amendments to the Textile Rules

1. Introduction

The comments submitted in response to the regulatory review of the Textile Rules propose certain amendments to the Rules. The Commission is also considering other amendments that were not mentioned in the comments. Many of the changes proposed in the comments were motivated by the passage of NAFTA, which has highlighted the importance of reconciling the labeling requirements of the member countries. The goal of NAFTA is to establish a trade zone in which goods can flow freely among Canada, Mexico, and the United States, a goal which may be impeded by the multiple burdens imposed on companies by regulations in the NAFTA countries. For example, the comments contend that language differences among the NAFTA countries, and regulations based on these differences, affect the printing of fiber content information, country of origin names, and care instructions.[13] Manufacturers must either print separate labels for each market, which may inhibit the efficient allocation of inventories within the NAFTA territory and increase costs to consumers,[14] or print unwieldy, multilingual labels that satisfy all of the regulatory requirements of each NAFTA country.[15] In addition, the comments contend that differences and conflicts involving other labeling requirements, including label attachment requirements, the definition of key terms, and responsible party identification systems in the NAFTA countries, may also interfere with free trade.[16] The comments generally agree that the NAFTA signatories must consult and coordinate with each other to simplify textile and apparel labeling so that differences in labeling rules and the manner in which compliance is determined do not pose trade barriers.[17]

The harmonization of labeling regulations is required by NAFTA. Article 906 of NAFTA states that ''the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties.'' Article 913 of the Act requires the creation of a Committee on Standards-Related Measures, including a Subcommittee on Labelling of Textile and Apparel Goods. In accordance with Annex 913.5.a-4, the Subcommittee

> shall develop and pursue a work program on the harmonization of labelling requirements to facilitate trade in textile and apparel goods between the Parties through the adoption of uniform labelling provisions. The work program should include the following matters:
>
> (a) pictograms and symbols to replace, where possible, required written information, as well as other methods to reduce the need for labels on textile and apparel goods in multiple languages;
>
> (b) care instructions for textile and apparel goods;
>
> (c) fiber content information for textile and apparel goods;
>
> (d) uniform methods acceptable for the attachment of required information to textile and apparel goods; and
>
> (e) use in the territory of the other Parties of each Party's national registration numbers for manufacturers of textile and apparel goods.

Many of the comments address these subject areas and contend that harmonizing labels would benefit manufacturers and consumers alike by decreasing the costs of production and distribution. One commenter stated that prices charged to consumers may decline if the costs associated with labeling decline.[18] A few comments contend that harmonized labeling would be less confusing to consumers.[19]

Based on the comments and other available information, the Commission has considered proposals to amend the Rules to: (a) allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a textile product, without requiring disclosure of the functional significance of the fiber, as presently required by Rule 3(b); (b) make cordage subject to the Textile Rules; (c) modify country of origin disclosure requirements; (d) eliminate the requirement of Textile Rule 16(b) that the front side of a cloth label, only one end of which is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, bear the wording ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label; (e) allow for a system of shared information for manufacturer or importer identification among the NAFTA countries; (f) add a provision specifying that a Commission RN will be subject to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted; (g) allow the use of abbreviations for generic fiber names; (h) allow the use of abbreviations and symbols in country of origin labeling; and (i) allow the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization.

After considering these recommendations, the Commission has rejected some of the suggested changes as not feasible or not in the public interest at this time. This Notice of Proposed Rulemaking (NPR) seeks comment concerning the remaining proposed changes. All of the recommendations for change are discussed below.

2. Proposals

a. *Use of Generic Fiber Names for Fibers with a Functional Significance Present in the Amount of Less than 5% of the Total Fiber Weight of a Textile Product*

One commenter recommended that the Commission eliminate Rule 3(b) to allow the listing of generic fiber names for fibers that have a functional significance and are present in the amount of less than 5% of the total fiber weight of a textile product, without disclosing the functional significance of the fibers, as the Rule currently requires.[20] The commenter maintains that the existing Rule is ''archaic'' because consumers know, for example, that the functional significance of spandex is elasticity. In addition, the commenter claims that the Rule is not well known in the textile industry and therefore creates problems with U.S. Customs for imports that are not properly labeled and must be delayed and remarked.

The Commission believes that amending Rule 3 in the manner suggested might benefit manufacturers

[13] This notice does not address the issue of the use of symbols in care labeling. The Commission has published separately a notice regarding that issue. 60 FR 57552 (Nov. 16, 1995).

[14] FRUIT (14) p.3.

[15] USA–ITA (11) p.2, see also FRUIT (14) p.2. The comments, however, do not provide extrinsic evidence that long labels cause consumer confusion or that they are financially burdensome to manufacturers or distributors.

[16] AFMA (7) p.1, FRUIT (14) p.2, SARA (19) p.4. FRUIT states that differences in labeling requirements may ''function as non-tariff trade barriers and significantly impede the free flow of goods within the NAFTA territory,'' inhibiting sales and harming American industry.

[17] WFC (6) p.1, AFMA (7) p.1, DR (8) p.1, RUFF (9) pp. 1–2, ATMI (10) pp.1–2, USA–ITA (11) p.2, FIELD (13) pp.1–2, FRUIT (14) pp.1–2, AAMA (15) p.1, TLC (16) p.1, ISAC 17 (17) p.1, WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.2, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[18] FRUIT (14) p.2.

[19] WFC (6) p.1, AAMA (15) pp.1, 2, TLC (16) p.2, WEMCO (18) p.1, SARA (19) pp.2, 3, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[20] GAP (12) p. 1–2.

and importers by dispensing with an unnecessary labeling requirement. In addition, the amendment may not harm consumers because consumers generally know the functional significance of many fibers and manufacturers probably will disclose voluntarily the functional significance of some fibers. Therefore, the Commission proposes to amend Rule 3 to read as follows:

§ 303.3 Fibers present in amounts of less than 5 percent.

Except as permitted in sections 4(b)(1) and 4(b)(2) of the Act, as amended, no fiber present in the amount of less than 5 per centum of the total fiber weight shall be designated by its generic name or fiber trademark in disclosing the constituent fibers in required information, but shall be designated as ''other fiber.'' Where more than one of such fibers are present in a product they shall be designated in the aggregate as ''other fibers.'' *Provided, however,* That nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance when present in the amount contained in such product, as for example:

96 percent Acetate
4 percent Spandex

when spandex has the functional significance of elasticity. In making such disclosure all of the provisions of the Act and regulations setting forth the manner and form of disclosure of fiber content information, including the provisions of §§ 303.17 of this part (Rule 17) and 303.41 of this part (Rule 41) relating to the use of generic names and fiber trademarks, shall be applicable.

Current Section 303.3(b) would be deleted. The proposed amendment would still prohibit disclosing fiber names for fibers that usually have a functional significance, but do not have that functional significance when present in the amount contained in the textile product. In addition, it would prohibit disclosing the fiber names for fibers present in the amount of less than 5% when the fiber has no functional significance. Thus, the proposed amendment would still allow the consumer to distinguish between fibers constituting less than 5% of the total weight that have a functional significance and those that do not. The Commission seeks comment on the benefits and costs to consumers and manufacturers of the proposed amendment and on whether the proposed change would be in the public interest.

b. *Make Cordage Subject to the Textile Rules.*

One commenter suggests that cordage products like rope and twine, which currently are not covered by the Textile Rules, be covered by the Rules because cordage is an assemblage of fibers. The commenter contends that mislabeling of cordage is a considerable problem which harms consumers.[21]

The Textile Act's marking requirements apply to ''household textile articles,'' defined in Section 2(g) of the Act as: ''articles of wearing apparel, costumes and accessories, draperies, floor coverings, furnishings, beddings, and other textile goods of a type customarily used in a household regardless of where used in fact.'' [22] Certain products, not including cordage, are specifically exempt from the Act. In addition, the Commission has discretion to exclude ''other textile fiber products (1) which have an insignificant or inconsequential textile fiber content, or (2) with respect to which the disclosure of textile fiber content is not necessary for the protection of the ultimate consumer.'' [23]

Rule 45, ''Exclusions from the Act,'' implements Section 12(b) of the Act by (1) declaring that all textile fiber products *except* those specifically listed in Rule 45(a)(1) are excluded and (2) by naming certain specifically excluded products in Rules 45(a)(2) through (9). Rule 45(a)(1) therefore contains a list of all the products that are covered by the Textile Act and its implementing regulations. Cordage does not appear on this list. Consequently, Rule 45(a)(1) implicitly excludes cordage from coverage under the Textile Act.

The Commission does not propose to amend the Textile Rules to include cordage. Although cordage has some household uses, it is not a common household textile, and there is no evidence that consumers rely on fiber content information in making purchase decisions about twine or other cordage products.[24] Any significant affirmative misrepresentations or failures to disclose material information relating to cordage fiber content can be addressed through Section 5 of the FTC Act, if necessary.

c. *Country of Origin Labeling*

Under the Textile Act and Textile Rule 33(a)(1), an imported textile fiber product must bear a label disclosing the name of the country where the product was processed or manufactured. One commenter recommends that companies that add value to imported greige goods (unfinished plain fabric) through printing and finishing be allowed to label the finished product as ''Made in USA.'' [25] Such a label would not comport with Rule 33, which states that a textile product made in the United States of imported fabric must contain a label disclosing those facts, as for example: ''Made in USA of imported fabric.'' Only those textile products completely made in the United States of fabric that was also made in the United States may be labeled ''Made in USA,'' without qualification.[26] At present, the Commission does not propose any amendments to this Rule. However, the Commission is currently examining issues pertaining to ''Made in USA'' advertising and labeling claims generally in a separate context.[27]

Many comments recommend that the FTC and U.S. Customs Service harmonize their regulations regarding country of origin marking for textile goods.[28] In particular, the Commission is aware that there may be a conflict between Rule 33 and Section 334 of the Uruguay Round Agreements Act, signed into law on December 8, 1994,[29] and U.S. Customs Service implementing regulations that will be effective July 1, 1996.[30] For certain categories of textile products, including household furnishings, such as linens, and apparel accessories, such as scarves and handkerchiefs, the country of origin under the new tariff laws will be the country where the fabric was produced, not the country where the item was finished. Commission staff has begun to meet with U.S. Customs Service staff to explore ways this apparent conflict might be resolved without unduly

[21] CORD (4) p.1.

[22] 15 U.S.C. 70(g).

[23] 15 U.S.C. 70j(b).

[24] The Fair Packaging and Labeling Act (FPLA), 15 U.S.C. § 1451 *et seq.*, requires that consumer commodities ''bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.'' 15 U.S.C. 1453(a)(1). 16 CFR 503.2(b) defines cordage as a ''consumer commodity'' under the Act. In addition, although the commenter claims that cordage is often not marked with the country of origin, it adds that this is true for ''other than prepackaged consumer/household cordage,'' CORD (4) p.1, which means that country of origin information does reach consumers of cordage destined for household use.

[25] CRAN (23) pp.1–2.

[26] In determining the appropriate disclosure for country of origin, the manufacturer or processor needs to look only one step back in the process. Thus, the label ''Made in USA'' would be appropriate if the finished article were made from fabric produced in the US. The manufacturer need not consider whether the yarn that went into the fabric was imported for purposes of determining the correct label.

[27] On July 11, 1995, the Commission announced that it would re-examine its ''Made in U.S.A.'' policy by (1) conducting a comprehensive review of consumers' perceptions of ''Made in USA'' and similar claims and (2) holding a public workshop to examine issues relevant to the standard. The Commission issued a notice, 60 FR 53922 (Oct. 18, 1995), requesting public comment in preparation for the workshop. The workshop will be held on March 26–27, 1996. 60 FR 65327 (Dec. 19, 1995).

[28] RUFF (9) p.1, ATMI (10) p.3, FRUIT (14) pp.2 and 4, SARA (19) p.2.

[29] Public Law 103–465, 108 Stat. 4809. Section 334 is codified at 19 U.S.C. 3592.

[30] 60 FR 46188 (Sept. 5, 1995).

burdening U.S. businesses and causing confusion to consumers. In addition, the Commission welcomes industry suggestions as to how this apparent conflict might be resolved in a way that will comply with the Uruguay Round Agreements Act marking requirements, provide meaningful information to consumers, and not require lengthy label disclosures.

d. *Label Mechanics and Textile Rule 16(b)'s ''Fiber Content on Reverse Side'' Disclosure Requirement*

Many comments discussed the interrelated issues of label type, label attachment, label placement, and use of both sides of a label to set out required information.[31] The comments recommend that the Textile Rules not specify a type of label (e.g., woven, non-woven, printed) to be used for required disclosures or the method of label attachment, to allow for changes in labeling technology. The comments recommend that the Rules require only that the label remain securely affixed to the product; the information be legible and remain legible for the useful life of the product; and both sides of a label be allowed to be used to display the information required by the Rules.[32] The comments discuss the issue of label attachment in the context of NAFTA and recommend that U.S. label attachment regulations be harmonized with those of the NAFTA countries. However, the comments do not explain whether inconsistencies in those regulations do in fact exist.

The current Rules already address many of the recommendations made by the comments regarding the mechanics of labeling. Rule 15—''Required Label and Method of Affixing''—allows any type of label (e.g., a hangtag, a gummed-on label) to be used, so long as the label is securely affixed and durable enough to remain attached to the product until the consumer receives it. Rule 15 does not require a permanent label for any of the disclosures required by the Textile Act, and there is therefore no requirement that the label remain legible for the useful life of the product. Rule 16 provides only that the Textile Act disclosures must be ''clearly legible and readily accessible to the prospective purchaser.''

In addition, although Rule 16(b) requires that all three Textile Act disclosures—country of origin, company name or RN, and fiber content—be made on the front of the required label, two provisos allow the use of both sides of the label. The first proviso allows the company name or RN to be on the back of the required label or on the front of another label in immediate proximity to the required label. When the required label is a cloth label, sewn to the product at one end so that both sides of the label are readily accessible to the prospective purchaser, the second proviso allows the fiber content disclosure to be placed on the back of the required label ''if the front side of such label clearly and conspicuously shows the wording 'Fiber Content on Reverse Side'.''

One commenter proposed that this second proviso of Textile Rule 16 be amended to eliminate the requirement that manufacturers place the phrase ''Fiber content on Reverse Side'' on the front side of the required label because ''consumers today are aware that both sides of the label contain information important to their purchasing decision.'' [33] The Commission agrees that consumers probably are in the habit of looking on the back of labels for needed information, such as fiber content or care instructions, and do not need a specific direction to do so. Thus, the requirement that the front side of a cloth label indicate that the fiber content information is on the reverse side is probably unnecessary.

The Commission, therefore, proposes to amend Rule 16(b). The Rule might be amended narrowly to eliminate the ''Fiber Content on Reverse Side'' disclosure requirement for cloth labels with one end sewn to textile products. Another alternative would be to amend Rule 16(b) to allow the required fiber content information to appear on the reverse side of any kind of permissible label (e.g., a cardboard label or a hang-tag label) as long as the information remains ''conspicuous and accessible.'' The latter alternative is broader than the amendment suggested by the comment, but comports with the contention that consumers are in the habit of looking on the back of labels. The Commission solicits comments on these alternative amendment proposals, including comments on the benefits and costs to consumers and manufacturers of the proposed amendments. It also solicits amendment language alternatives.

The Commission also requests comment on whether fiber content identification should be printed on labels that are permanently attached to a textile product,[34] and on whether the other two required disclosures should similarly appear on a permanent label. This information may continue to be useful to consumers throughout the life of the product. For example, fiber content identification may assist professional cleaners in determining whether certain newly developed wet-cleaning techniques are appropriate for an item of textile apparel. Moreover, due to advances in labeling technology, requiring a permanent label may not be burdensome to manufacturers. Many manufacturers already make the required disclosures on a permanent label. Finally, the Commission seeks comment concerning any specific conflicting rules and regulations for label attachment in Mexico and Canada, and whether such conflicts pose trade impediments that could be removed by changing the Commission's Rules.

e. *System of Shared Information for Manufacturer or Importer Identification Among the NAFTA Countries.*

Under the Textile Act,[35] the Wool Products Labeling Act,[36] and the Fur Products Labeling Act,[37] the required label on covered products must bear the identification of one or more companies responsible for the manufacture, importation, offering for sale, or other handling of the product, either by the full name under which the company does business or, in lieu thereof, by the RN issued by the Commission. Canada has a similar system of identification numbers known as CA numbers. Mexico does not have a similar system, but the Mexican government issues tax identification numbers to companies.

To eliminate the need for a company to register in more than one country, the comments recommend that the FTC and appropriate government agencies in the NAFTA countries develop an integrated system for identifying the manufacturer, importer, or dealer of a textile product that would allow any RN, CA, or Mexican tax identification number to suffice as legal company identification

[31] WFC (6) p.1, DR (8) p.1, RUFF (9) p.2, ATMI (10) p.5, FIELD (13) p.6, FRUIT (14) p.5, AAMA (15) p.3, TLC (16) p.4, WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.6, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1. The work program of the NAFTA subcommittee on labeling includes ''a uniform method of attachment'' as one of its issues.

[32] WFC (6) p.1, DR (8) p.1, RUSS (9) p.2, ATMI (10) p.5, FIELD (13) p.6, AAMA (15) p.3, TLC (16) p.4, WEMCO (18) p.1, SARA (19) p.4, HORACE (20) p.2, MILL (22) p.6, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[33] FRUIT (14) p.5.

[34] Comment on this issue was also requested in a Federal Register notice seeking comment on proposed amendments to the Commission's Care Labeling Rule, 16 CFR Part 423. 60 FR 67102 (Dec. 28, 1995).

[35] Section 4(b)(3) of the Textile Act and Rules 16(a)(2), 19, and 20 thereunder, require manufacturers or other responsible parties to include their name or registered identification number on a textile label.

[36] 15 U.S.C. 68 *et seq.*

[37] 15 U.S.C. 69 *et seq.*

in all three NAFTA countries.[38] The comments repeatedly state that it would not be necessary to create one identification number system. They recommend that each NAFTA country continue its policy and procedure of registration, with the U.S. continuing the present system of RN numbers. The countries could then exchange information on computer databases so that a textile product can be traced to a manufacturer or other responsible party using either an RN number, a CA number, or a Mexican tax number.

Both the Textile Act and the Rules would have to be amended to allow CA numbers and Mexican tax numbers, which are not registered by the Commission, to be used on textile products shipped for distribution in the United States. At this time, the Commission is not considering any amendments to the Textile Rules related to responsible party identification. Before the Commission considers whether to recommend that Congress amend the Textile Act, it seeks comment on the advantages and disadvantages of a system of shared information, the feasibility of implementing such a system across borders, and the impact such a system would have on the ability of the Commission, consumers, and firms to track responsible parties. The Commission would recommend that Congress amend the Textile Act *only* if the NAFTA countries reach an agreement to share information. Such agreement would be critical to the effectiveness of any amendments to the Textile Act and Rules.

f. *Require Holders of RN Numbers to Update their Registration Information when Changes in that Information Occur*

The success of a system of shared information would also depend to a great extent on the availability and the quality of the information in the Commission's RN registry and the registration systems of the other NAFTA signatories. To increase the usefulness of the RN registry, the Commission plans to improve its accuracy and the ease of access to its contents.

Since initially being issued their RN's, many companies have changed their legal business name, business address, and/or company type (e.g., from proprietorship to corporation) without notifying the FTC about the change(s), as requested in the RN number application. Since the 1940's many RN holders have gone out of existence, and others, while still in existence, no longer have any need for their RN's. As a result, a large percentage of the official FTC records are inaccurate (i.e., not reflecting an actual user's correct name, place of business, and/or company type) or obsolete (e.g., reflecting an RN held by a non-existent company).

Registered identification numbers are subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest. The Commission proposes to add a provision to the Textile Rules that would subject an RN number to cancellation if, after a change in the material information contained on the RN application, a new application that reflects current business information is not promptly submitted. The new, updated application would replace the old one in the Commission's files; there would be no charge for processing the new application. Any company whose RN application does not reflect current business information by a specified deadline would have its RN cancelled. Commission staff would make every reasonable effort to identify and locate all companies actually using an RN and help them update their applications before the specified deadline.

The Commission seeks comment on the following proposed amendment to Rule 20(b):

§ 303.20 Registered identification numbers.

(a) * * *

(b)(1) * * *

(2) Registered identification numbers will be subject to cancellation if the Federal Trade Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or concern to whom a registered identification number has been assigned by application duly executed in the form set out in subsection (d) of this section, reflecting the current name, business address, and legal business status of the person or concern.

(3) Registered identification numbers will be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest.

g. *Use of Abbreviations for Fiber Content Identification.*

Although supporting the fiber content disclosure requirements, the comments recommend that the Rules be amended to allow abbreviations of generic fiber names in fiber content disclosures.[39] Many comments state that spelling out complete fiber names in three languages for the marketing of textile products in the NAFTA countries is unwieldy and that abbreviations of generic fiber names would permit the required information to be conveyed on a smaller label.[40] The comments contend that if abbreviations were permitted, they could lead to a single label for NAFTA countries and eventually to an international label.[41]

Many comments urge that the FTC and the appropriate agencies in the NAFTA countries adopt abbreviations for the most common fibers—acrylic, cotton, nylon, polyester, rayon, silk, spandex, and wool—which purportedly represent more than 80% of all apparel and textile products sold in the marketplace, and an abbreviation for designating ''other fibers'' that are present in amounts of less than 5% of total fiber weight.[42] The result would be three abbreviations, one in each language—English, Spanish, and French—for the most common generic fibers.[43] Although abbreviations eventually could be developed for other fibers, the comments emphasize the need to develop abbreviations for the more common generic fibers first. Other fibers which the rules do not permit to be lumped together as ''other fibers'' can be identified by their full fiber names.[44] A few comments recommend three- to four-letter abbreviations for fiber names.[45] One commenter states that any abbreviations used for fiber identification should not arbitrarily be limited to a specific number of letters, as in three- to four-letter abbreviations.[46]

[38] WFC (6) p.1, DR (8) p.1, RUFF (9) pp.1–2, ATMI (10) p.2, USA–ITA (11) p.2, FIELD (13) pp.2–3, FRUIT (14) p.5, AAMA (15) pp.2–3, TLC (16) p.4, ISAC 17 (17) p.1, WEMCO (18), p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) p.3, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[39] WFC (6) p.1, DR (8) p.1, RUFF (9) p.2: ATMI (10) p.4–5, USA–ITA (11) p.2, FIELD (13) pp.4–5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) pp.3–4, ISAC 17 (17) p.2, WEMCO (18) p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) pp.4–5, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[40] WFC (6) p.1, USA–ITA (11) p.2, FRUIT (14) p.2, AAMA (15) p.2, TLC (16) p.3, ISAC 17 (17) p.2, WEMCO (18) p.1, SARA (19) p.1, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[41] ISAC 17 (17) p.2.

[42] WFC (6) p.1, DR (8) p.1, ATMI (10) p.4, FIELD (13) pp.4–5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA (19) p.2, MILL (22) pp.4–5, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1. Some comments omit acrylic from this list of fibers. RUFF (9) p.2, HORACE (20) p.2, RUSS (25) p.2.

[43] WFC (6) p.1, DR (8) p.1, RUFF (9) p.2, ATMI (10) p.4, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA, (19) p.2, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[44] DR (8) p.1, ATMI (10) p.4, FIELD (13) p.5, FRUIT (14) p.3, MILL (22) p.5.

[45] FIELD (13) p.4, ISAC 17 (17) p.2.

[46] AFMA (7) states, at p. 2, that ''[a]s labeling requirements are simplified, the quality and

Continued

The comments recognize that when fiber names are entirely different in different languages, arriving at common abbreviations may be difficult.[47] But the comments point out that when fiber names are identical or similar, the same abbreviation could be used by more than one country, thereby reducing the use of abbreviations on labels.[48]

The comments also recommend that the use of abbreviations should be optional,[49] and that manufacturers should be allowed to use full labeling and still qualify for NAFTA benefits in all signatory countries.[50] To educate the public about the meaning of abbreviations, the comments recommend that manufacturers or retailers provide hangtags, explanatory charts, or other consumer education labels for a limited period.[51]

The Commission believes that the use of abbreviations for fiber names may be beneficial to companies without harming consumers. The Commission therefore proposes to amend Rules 5 and 6 to allow the use of abbreviations for generic fiber names. At present Textile Rule 5 does not allow the use of abbreviations for disclosures of required information, except for the country of origin. To allow the use of abbreviations, the Commission proposes to amend Rules 5 and 6 (Sections 303.5 and 303.6) to read as follows:

§ 303.5 Abbreviations, ditto marks, and asterisks prohibited.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated except as permitted in Rule 33(e) and Rule 6.

* * * * *

§ 303.6 Generic names of fibers to be used.

(a) Except where another name is permitted under the Act and Regulations, the respective generic names of all fibers present in the amount of five per centum or more of the total fiber weight of the textile fiber product shall be used when naming fibers in the required information; as for example: cotton, rayon, silk, linen, nylon, etc., *provided, however,* that the following abbreviations may be used for cotton, wool, polyester, rayon, nylon, spandex, silk, and acrylic:

cotton—cot
wool—wl
polyester—poly
rayon—ryn
nylon—nyl
spandex—spdx
silk—slk
acrylic—acrl

* * * * *

The Commission solicits comments on these proposed amendments, as well as alternative amendment language, other suggestions for English-language abbreviations for the above-listed fibers, and abbreviations for the catch-all classifications, ''other fiber'' and ''other fibers.'' The Commission also seeks submission of empirical data (copy tests, etc.) about consumer understanding of abbreviations and the impact that the use of abbreviations may have on consumers and firms. In addition, the notice asks whether the use of abbreviations on the required fiber content labels should be conditioned upon use of explanatory hangtags, indefinitely or for a limited period of time, and if the latter, for how long.

h. *Use of Abbreviations and Symbols in Country of Origin Labeling*

Rule 33 requires that the name of the country where the textile product was processed or manufactured be indicated on a label. The comments recommend that the Rules be amended to allow the optional use of three-letter abbreviations for country of origin names (such as CAN for Canada, MEX for Mexico, and USA for the United States),[52] and a symbol, such as a solid flag, to denote the words ''made in'' or ''product of'' in country of origin disclosures.[53] The commenters assert this would facilitate trade under NAFTA by reducing the label size, eliminating the need for three languages, and reducing consumer confusion. The comments contend that consumer education programs could be instituted to educate the consumer as to the meaning of the abbreviations and the symbol.[54] Only one comment opposed the use of abbreviations of country names.[55]

Rule 33(e) already permits abbreviations of country of origin names if they ''unmistakably indicate the name of a country.'' The challenge will be to develop abbreviations that convey the country of origin and also harmonize with abbreviations used in the other NAFTA countries. Because Rule 33(e) already allows abbreviations for country of origin names, the Commission does not recommend any change to that Rule at this time. Nor does it recommend any change to permit the use of symbols in country of origin labeling because it lacks sufficient knowledge about the feasibility of doing so.

The Commission solicits more information from consumers, textile industry representatives, and U.S. Customs about the use of abbreviations and symbols in country of origin labeling. The Commission seeks specific recommendations for the abbreviations to be used for ''Canada,'' ''Mexico,'' and the ''United States,'' as well as comments on the viability of using symbols in making country of origin disclosures. The Commission seeks comment on the benefits and costs to consumers and firms of adding specific country of origin abbreviations to the Rules and allowing symbols.

i. *Procedures for Establishing New Generic Names for Manufactured Fibers.*

Under Section 7(c) of the Textile Act, the Commission is ''authorized and directed to make such rules and regulations, *including the establishment of generic names of manufactured fibers* * * * as may be necessary and proper for administration and enforcement.'' 15 U.S.C. 70e(c) (emphasis added). Currently, Rule 7 sets out the generic names and definitions for manufactured fibers that are recognized by the Commission. If a manufacturer or producer develops a new fiber that is not listed in Rule 7, the fiber content identification label must identify the new fiber by using one of the already recognized generic names or the manufacturer or producer of the new fiber must file, under Rule 8, a written application with the Commission, requesting the establishment of a new generic name for the new fiber. Such a requirement limits the proliferation of new fiber names and therefore benefits consumers, who need only acquaint themselves with a few generic names to understand fiber content disclosures. But at the same time, the limitation on

consistency of information provided to the consumer should be maintained,'' so as not to compromise ''the two decades of education and experiences developed under the current system in the United States.''

[47] AFMA (7) p.3.

[48] WFC (6) p.1, AFMA (7) p.3, DR (8) p.1, RUFF (9) p.2, ATMI (10) p.4, FIELD (13) p.4, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.3, WEMCO (18) p.1, SARA (19) p.2, HORACE (20) p.2, MILL (22) p.4, ANGEL (24) p.1, RUSS (25) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[49] AAMA (15) p.2.

[50] AFMA (7) p.3.

[51] WFC (6) p.1, DR (8) p.1, RUFF (9) p.1, ATMI (10) p.4, FIELD (13) p.5, FRUIT (14) p.3, AAMA (15) p.2, TLC (16) p.4, WEMCO (18) p.1, SARA (19) p.2, MILL (22) p.5, ANGEL (24) p.1, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[52] WFC (6) p.1, DR (8) p.1, RUFF (9) p.1, ATMI (10) p.3, FRUIT (14) p.4, AAMA (15) p.1, TLC (16) p.3, ISAC 17 (17) p.3, WEMCO (18) p.1, SARA (19) p.2, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[53] WFC (6) p.1, DR (8) p.1, RUFF (9) p. 1, ATMI (10) p.3, FRUIT (14) p.4, AAMA (15) p.1, TLC (16) p.3, ISAC 17 (17) p.3, WEMCO (18) p.1, SARA (19) p.2, MILL (22) p.4, ANGEL (24) p.1, RUSS (25) p.2, HAGGAR (26) p.1, CAP (27) p.1, BIDER (28) p.1.

[54] RUFF (9) p.1.

[55] MILL (22) pp.1–2, 4. MILL states, at p.1, that ''[a]nything less than the complete country name would obscure for consumers the country of origin information intended by the Congress in the labeling acts and the current F.T.C. rules.''

new generic names may place manufacturers of new fibers at a competitive disadvantage because identifying a new fiber with an inappropriate recognized generic name may disparage the new fiber and harm the manufacturer.

The Commission proposes to amend Rules 7 and 8 to allow the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization, such as the International Organization for Standardization (ISO) or the International Bureau for the Standardization of Man-Made Fibers (BISFA). Textile Rules 7 and 8 could be amended to state that if such a body recognizes a new fiber and a new generic name, then the use of the new generic fiber name in this country would not violate the Textile Act and the Textile Rules. The Commission would retain its own list of manufactured fiber names. This would allow manufacturers that use generic names recognized by the Commission, but not recognized by ISO, to continue to use their names. By relying on a standards-setting body, the Commission could save the resources of duplicating the inquiry in a proceeding under Textile Rule 8. At the same time, manufacturers could continue to apply to the FTC for the recognition of new generic fiber names.

The Commission seeks comment on the following proposed amendments to Textile Rules 7 and 8. The Commission proposes to amend Rule 7 by adding the following language at the end of the Rule, after the list of definitions of generic names for manufactured fibers:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(u) * * *

In addition to the above-defined names, the generic names and their respective definitions recognized by the International Organization for Standardization (ISO) in its International Standard ISO 2076 are incorporated by reference into this Rule section and are recognized as generic names and definitions for purposes of these Rules, unless and until the Commission finds that a generic name in such International Standard is inappropriate for use in the United States.

The Commission proposes to amend Rule 8 to read as follows:

§ 303.8 Procedure for establishing generic names for manufactured fibers.

(a) Prior to the marketing or handling of a manufactured fiber for which no generic name has been established or otherwise recognized by the Commission, the manufacturer or producer thereof shall file a written application with the Commission, requesting the establishment of a generic name for such fibers, stating therein:

* * * * *

III. Invitation To Comment and Questions for Comment

A. Invitation

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the Textile Rules. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

B. Questions

Use of Generic Fiber Names for Fibers with a Functional Significance and Present in the Amount of Less Than 5% of the Total Fiber Weight of a Textile Product

1. Should Textile Rule 3 be amended to allow manufacturers to list the generic fiber name(s) of fiber(s) that have a functional significance and are present in the amount of less than 5% of the weight of the textile product, without also requiring disclosure of the functional significance of the fiber(s)?

a. What benefits and costs to consumers and businesses would result from such an amendment?

b. Is the proposed amendment language set out in this notice appropriate? If not, what amendment language should be used?

Label Mechanics and Textile Rule 16(b)'s ''Fiber Content on Reverse Side'' Disclosure Requirement

2. Should Textile Rule 16 be amended to eliminate the requirement that the front side of a cloth label, sewn to the product so that both sides of the label are readily accessible to the prospective purchaser, bear the words ''Fiber Content on Reverse Side'' when the fiber content disclosure is listed on the reverse side of the label? Is there a continuing need for such a requirement?

3. Should Textile Rule 16 be amended to allow the required fiber content information to appear on the reverse side of any kind of allowable label as long as the information remains ''conspicuous and accessible?''

a. What benefits and costs to consumers and firms would result from each of these alternative amendments?

4. Are there any rules or regulations concerning label attachment in Canada or Mexico that conflict with the Textile Rules? If so, what are they, and how do they conflict?

Identification Numbers of Manufacturers or Other Responsible Parties

5. Should the Commission amend the Textile Rules to allow the interchangeable use of RN, CA, or Mexican tax numbers?

a. What are the advantages and disadvantages of a system of shared information?

b. Would the implementation of a system of shared information across national borders be feasible?

c. What impact would a system of shared information have on the ability of consumers and businesses to track responsible parties?

d. What benefits and costs to consumers and businesses would result from such an amendment?

Fiber Identification Labeling

6. Should the Commission amend the Textile Rules to permit the abbreviation of fiber names on fiber content identification labels?

a. What costs and benefits to consumers and businesses would accrue from allowing the use of abbreviations for fiber content identification?

b. Are there existing abbreviations for fibers that would clearly convey the required fiber content identification information?

c. Is the proposed amendment language set out in this notice appropriate? If not, what amendment language should be used?

7. Do Canadian and Mexican regulations allow the use of abbreviations of fiber names on fiber content identification labels?

8. Do any empirical data (copy tests, etc.) exist concerning consumer understanding of fiber name abbreviations?

9. Should the Textile Rules be amended to require that the required disclosures be printed on labels that are permanently attached to textile products? Should a permanent label be required only for fiber content identification or for all three required disclosures?

Country of Origin Labeling

10. Are there existing abbreviations that would ''unmistakably indicate the name'' of each of the NAFTA countries?

a. Do Canadian and Mexican regulations allow the use of abbreviations for country of origin names?

b. Would U.S. Customs regulations pose any impediment to an amendment of Commission rules to allow abbreviations of country names?

11. Should the Commission amend the Textile Rules to allow a symbol to be used to mean ''made in'' or ''product of,'' or other similar phrases, in country of origin labeling?

a. What would be the advantages and disadvantages of allowing the use of a symbol?

b. If the Commission decides to allow the use of a symbol, which symbol should be used?

c. What benefits and costs would allowing a symbol have for purchasers of the products affected by the Textile Rules?

d. What actions can be taken to ensure that consumers understand what the symbol means?

e. How would the use of a symbol work when manufacturers wish to distinguish between the country of origin of an unfinished textile product and the country where another phase of the manufacturing process takes place, as in ''Made in the Dominican Republic of United States components''?

12. How can the apparent conflict between the Commission's country of origin labeling requirements and the new marking requirements imposed by U.S. Customs, with regard to household furnishings and apparel accessories, be resolved in a manner that will be consistent with statutory requirements, provide meaningful information to consumers, and not be burdensome to U.S. businesses?

13. Are there additional conflicts between Commission and Customs regulations on country of origin labeling for textile products? If so, what is the specific nature of the conflict, and how can it be resolved in the best interests of both businesses and consumers?

Procedures for Establishing New Generic Names for Manufactured Fibers

14. Should the Commission amend the Textile Rules to allow the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization?

a. If the Commission decided to amend the Textile Rules in this manner, what international standards-setting organization(s) should the Commission follow?

b. Is the proposed amendment language set out in this Notice appropriate? If not, what amendment language should be used?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed amendments to the Textile Rules on small businesses. The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed actions, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed actions, and any significant alternatives to the proposed actions that accomplish their objectives and, at the same time, minimize their impact on small entities.

A description of the reasons why the proposed amendments are being considered and the objectives of the proposed amendments to the Rules have been explained elsewhere in this Notice. The proposed amendments do not appear to have a significant economic impact on a substantial number of small businesses. To the extent they do have an effect on such entities, the effect should be to reduce the costs of compliance with Textile Act requirements.

Therefore, based on available information, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that, if the Commission amends the Textiles Rules as proposed, that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

V. Paperwork Reduction Act

The Textile Rules contain various collection of information requirements for which the Commission has current clearance under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, pursuant to Office of Management and Budget (OMB) Control Number 3084–0101.

In addition, the amendments proposed in this notice would lower the paperwork burden associated with the current Rules. The proposed amendments would eliminate the functional significance disclosure requirement of Rule 3(b) and the ''Fiber Content on Reverse Side'' disclosure requirement of Rule 16(b). They would allow abbreviations for generic fiber names and the use of new generic names for manufactured fibers if the name and fiber are recognized by an international standards-setting organization.

VI. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 303

Textile fiber products identification; Trade practices.

Authority: 15 U.S.C. 70 et seq.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–2935 Filed 2–9–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 95P–0241]

RIN 0910–AA19

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its food labeling regulations by amending the definition of the term ''healthy'' to permit certain processed fruits and vegetables and enriched cereal-grain products that conform to a standard of identity to bear this term. This action is intended to provide consumers with information that will assist them in achieving their dietary goals and is in response to petitions submitted to the agency by the American Frozen Food Institute (AFFI), the National Food Processors Association (NFPA), and the American Bakers Association (ABA).

DATES: Written comments by April 29, 1996. FDA proposes that any final rule that may issue based on this proposal become effective on the date of publication in the Federal Register.

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

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 10, 1994 (59 FR 24232), FDA published a final rule entitled ''Food Labeling: Nutrient Content Claims, Definition of Term: Healthy'' (hereinafter referred to as ''the healthy final rule''), which established a definition for the use of the implied nutrient content claim ''healthy'' under the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990. The regulation permits the use of the term ''healthy'' and its derivatives on the labels of individual foods, main dishes, and meal products that are particularly useful, because of their nutrient profile, in constructing a diet that conforms to current dietary guidelines.

The definition for ''healthy'' in § 101.65(d)(21 CFR 101.65(d)) provides that an individual food, main dish, or meal product may bear this term if: (1) It is ''low'' in fat and saturated fat, (2) its content of sodium and cholesterol does not exceed the levels for these nutrients established in the definition, and (3) it contributes at least 10 percent of the Reference Daily Intake or Daily Reference Value of one or more of the following nutrients: Vitamin A, vitamin C, calcium, iron, protein, or fiber (that is, the food must be a ''good source'' of one or more of the six listed nutrients). The definition provides that a food can be fortified to meet the requirement that the food be a ''good source'' of one or more of these nutrients if the fortification is done in accordance with the agency's fortification policy in § 104.20 (21 CFR 104.20).

FDA provided one narrow exception to the requirement that a food bearing the term ''healthy'' be a ''good source'' of one or more of the six listed nutrients. The agency stated that the claim can be used on raw fruits and vegetables that do not meet the nutrient contribution requirement but that meet all other aspects of the definition. As FDA stated in the healthy final rule (59 FR 24232 at 24244), increased consumption of raw fruits and vegetables can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines, even if particular items, such as celery and cucumbers, do not contain 10 percent of the daily value of one of the six identified nutrients. However, the agency also stated that it was not prepared to extend this exemption to all fruit and vegetable products because it did not have an adequate basis to evaluate the effects of processing (i.e., exposure to liquid packing medium, freezing, canning, cooking, and other procedures) on these foods. In addition, the agency sought information on whether to propose changes in the 10 percent nutrient contribution requirement to allow other foods to bear the term that did not meet this aspect of the definition but may also be particularly useful in assisting consumers to achieve dietary goals.

II. Petitions

A. Description of Petitions

Following publication of the healthy final rule, two trade associations submitted petitions to FDA that requested that the agency reconsider its decision regarding the nutrient contribution exemption for raw fruits and vegetables. A third trade association submitted a citizens petition requesting that FDA amend the ''healthy'' definition to exempt certain enriched cereal-grain products from the 10 percent nutrient contribution requirement.

Both of the petitions for reconsideration requested that FDA revise the definition of ''healthy'' to extend this exemption to processed fruits and vegetables. The petition submitted by AFFI (Docket No. 91N–384H/PRC1) disagreed with FDA's assertion that it did not have an adequate basis to evaluate the effects of the freezing process on the nutritional profile of fruits and vegetables. AFFI contended that it had provided the agency with extensive nutrition information for frozen fruits and vegetables, in conjunction with the development of AFFI's nutrient data base for frozen fruits and vegetables. AFFI also stated that the nutrient profile information for frozen products submitted in its data base proposal shows that the nutrient profile information on frozen vegetables does not differ significantly from the nutrient profile information for fresh products, and that in some cases the nutrient levels in frozen products exceed the nutrient levels in fresh products. Consequently, AFFI argued that, contrary to FDA's assertion, the agency already had extensive information in its possession regarding the effects of the freezing process on the nutrient profile of frozen fruits and vegetables, and that precluding use of the term ''healthy'' on frozen fruits and vegetables while permitting use of the term on fresh fruits and vegetables implies a distinction in nutritional value that does not exist.

AFFI requested that FDA reconsider its position and revise its definition of ''healthy'' to permit frozen fruits and vegetables that do not meet the ''good source'' requirement, but otherwise meet the requirements of the claim, to bear the term. In addition to the petition, AFFI also submitted supplemental comments to the administrative record for the ''healthy'' final rule containing data that compare the nutrient profiles of various raw and frozen fruits and vegetables.

NFPA also petitioned (Docket No. 91N–384H/PRC2) the agency to reconsider its position regarding the exemption for raw fruits and vegetables. In its petition, NFPA contended that the exemption for raw fruits and vegetables established in the final rule was not a logical outgrowth of the proposal because FDA failed to give adequate

notice and opportunity for comment to the public on the different labeling requirement for raw and processed fruits and vegetables in its healthy proposal. Consequently, the petition argued, interested parties were not allowed to participate in the rulemaking in a meaningful and informed manner on the issue of establishing such an exemption.

Furthermore, NFPA asserted that FDA incorrectly drew a distinction in the nutritional benefit between raw and processed fruits and vegetables, and that such a distinction has no logical basis in fact or law. It contended that the administrative record before the agency fails to provide any justification for this distinction, and that such a distinction is contrary to prior FDA positions and regulations. Thus, NFPA requested that § 101.65(d)(2)(iv) be revised to eliminate the word ''raw'' so that processed fruits and vegetables, as well as raw fruits and vegetables, will be exempt from the nutrient contribution requirement for food labeled ''healthy.''

The third citizen petition (Docket No. 95P–0241), submitted by ABA, requested that FDA amend the definition of ''healthy'' to permit enriched cereal-grain products that conform to the standards of identity in parts 136, 137, or 139 (21 CFR parts 136, 137, or 139), and bread that conforms to the standard of identity for enriched bread in § 136.115 except that it contains whole wheat or other grain products not permitted under that standard, to bear the term ''healthy.'' ABA contended that while some enriched breads might meet the 10 percent nutrient contribution requirement for fiber, most enriched grain products cannot meet the 10 percent nutrient contribution requirement for any of the six listed nutrients because they are precluded by the standards of identity from containing 10 percent of the six listed nutrients. In other words, under the food standards and FDA's fortification policy, the nutrients and levels required by the standards of identity cannot be altered. Moreover, ABA argued that most nutritional authorities agree that grain products have a central role in a healthy diet because they are excellent sources of complex carbohydrates. In fact, ABA argued, most nutritional authorities recommend that Americans increase their consumption of grain products as alternative sources of energy to replace dietary fat. The petitioner contended that these foods are, therefore, precisely the kinds of foods that FDA intended to permit to bear the term ''healthy.''

ABA further argued that the 10 percent nutrient contribution requirement was obviously not intended to apply to foods that conformed to the standards of identity for enriched grain products because it precludes virtually all enriched grain products from bearing a ''healthy'' claim. ABA contended that this exclusion is inconsistent with the basis of the ''healthy'' claim because these foods are particularly helpful in assisting consumers to construct a diet that conforms to current dietary guidelines. The petition notes that the Food Guide Pyramid recommends that 6 to 11 servings of grain products be consumed per day. ABA contended that this recommendation demonstrates the importance of including these foods in the diet. ABA argued that the 10 percent nutrient contribution requirement has had the unintended effect of precluding foods that FDA intended to be labeled ''healthy'' from bearing that term. Thus, ABA requested that the agency amend § 101.65 to exempt: (1) Enriched grain products that conform to a standard of identity in part 136, 137, or 139, and (2) bread that conforms to the standard of identity for enriched bread in § 136.115 (except that it contains whole wheat or other grain products not permitted under that standard) from the 10 percent nutrient contribution requirement.

In the alternative, ABA suggested that the agency expand the list of nutrients that must be present at 10 percent to include complex carbohydrates, niacin, or thiamin. Such action would permit enriched grain products to bear health claims because these products are a significant source of such nutrients.

A second alternative suggested in the petition would be to amend the 10 percent nutrient contribution requirement to allow it to apply to a daily consumption of grain products rather than to the nutrient profile of a specific food.

B. Response to Petitions

FDA has fully evaluated both petitions for reconsideration and reviewed the administrative record to determine whether, in light of the arguments raised in the petitions, the agency would have reached a different decision regarding the exemption from the nutrient contribution requirement for raw fruits and vegetables in the definition of ''healthy.'' The agency has determined that based on the administrative record at the time of publication of the healthy final rule, FDA made the correct decision. While FDA acknowledges that AFFI had submitted nutrient profile information on frozen fruits and vegetables, this information was presented as an acceptable nutrient data base for nutrition labeling of frozen fruits and vegetables and did not contain information comparing nutrient profiles between raw fruits and vegetables and frozen fruits and vegetables. Moreover, the data base was not submitted, or referenced, as part of the administrative record for the healthy final rule and therefore was not before the agency in that rulemaking.

Although the information relied on in AFFI's petition may serve as grounds for revising FDA's regulations concerning ''healthy'' (as discussed in section III.C. of this document), because the information was not part of the administrative record in the initial rulemaking, AFFI has not met the standard in § 10.33(d)(1) (21 CFR 10.33(d)(1)) for granting a petition for reconsideration. AFFI failed to demonstrate that relevant information or views contained in the administrative record were not previously or not adequately considered during that rulemaking. Accordingly, the agency is denying AFFI's petition for reconsideration.

In response to the arguments raised in NFPA's petition, FDA acknowledges that the issue of nutrient content requirements specifically for raw and processed fruits and vegetables was not directly addressed in the proposal. However, the agency did discuss and solicit comment on the appropriateness of requiring foods bearing the term ''healthy'' to meet a nutrient contribution requirement in the proposal that FDA published in the Federal Register of January 6, 1993 (58 FR 2944 at 2948). This discussion alerted interested parties to the possibility that the agency could modify the proposal and include a nutrient contribution requirement in the ultimate final rule.

In response to this discussion, the agency did receive several comments that addressed the impact of imposing such a requirement on raw fruits and vegetables. Some of these comments asserted that, compared to other foods, all raw fruits and vegetables are inherently healthy and should not be required to meet a nutrient contribution requirement. The agency considered the merits of these comments and the other comments that it received and determined that it was appropriate to: (1) Include a nutrient contribution criterion in the ''healthy'' definition, and (2) exempt raw fruits and vegetables from this requirement (59 FR 24232 at 24244).

Because this issue was addressed in the healthy proposal of January 6, 1993, the agency finds that its decision to

include a nutrient contribution requirement in the ''healthy'' definition, and to define its application to various foods, was a logical outgrowth of the proposal. Thus, FDA finds that it acted in accordance with the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) and rejects the assertion by NFPA that the agency violated the procedural requirements of the APA. Consequently, FDA is also denying NFPA's petition for reconsideration.

III. The Proposal

Although the agency has decided under § 10.33 not to grant the petitions for reconsideration, FDA has been persuaded by the concerns raised in the petitions and the information submitted in the supplemental comments to consider whether some fruit or vegetable products are being inappropriately excluded from bearing the ''healthy'' claim because the food cannot meet the nutrient contribution requirement.

In the healthy final rule, FDA stated that it was not prepared to extend the exemption from the nutrient contribution requirement to all fruits and vegetables because it did not have an adequate basis to evaluate the effects of various processing techniques on the food. The agency was concerned that precluding raw fruits and vegetables from bearing a ''healthy'' claim could confuse consumers and undermine an important element of current dietary guidance that emphasizes consumption of fruits and vegetables. For processed fruits and vegetables, however, the agency was not sure that processing did not have a significant effect on the nutritional profile of the food. The agency sought information on whether to propose changes in the nutrient contribution requirement for processed fruits and vegetables, as well as for other foods that may be useful in achieving dietary guidelines but did not meet the nutrient contribution requirement.

A. All Fruit and Vegetable Products

The agency has carefully considered whether all fruit and vegetable products should be exempt from the nutrient contribution requirement, and whether simply revising the ''healthy'' definition to remove the term ''raw'' from § 101.65(d), as requested by NFPA, would assist consumers in maintaining healthy dietary practices. As the agency discussed in the healthy final rule (59 FR 24232 at 24239), for this implied claim to be useful, foods that are able to bear the term should be of a sufficient number and variety to help consumers achieve a total diet that is consistent with current dietary recommendations. The agency would consider it inappropriate if the requirements in the definition of this term, specifically the nutrient contribution requirement, precluded use of the claim for such a large number of fruit and vegetable products that the ''healthy'' claim was no longer useful for this category of foods, or for consumers wishing to rely on the ''healthy'' claim to select fruit and vegetable products that are particularly useful in constructing diets that conform with current dietary recommendations.

A survey of fruit and vegetable products available in the local supermarket and a review of the U.S. Department of Agriculture's (USDA's) nutrient data base for fruit and vegetable products reveal that out of a total of over 700 fruit and vegetable products reviewed, 65 percent are eligible to bear the ''healthy'' claim (Refs. 1 and 2). The agency notes that these products comply with all the criteria of the definition for the term ''healthy,'' including the nutrient contribution requirement. Therefore, FDA tentatively concludes that a general exemption for all fruit and vegetable products is not warranted because a significant number and variety of products currently on the market are eligible to bear the claim.

In fact, FDA is concerned that if it were to propose to extend this exemption to all fruit and vegetable products, the utility of the ''healthy'' claim for this category of foods would be greatly diminished. If the claim were permitted on virtually all fruit and vegetable products, it could not be used to highlight those fruit and vegetable products that meet the requirements of the definition without an exemption. In addition, the agency points out that permitting the claim to appear on virtually all products would mean that it would appear on some formulated, multi-ingredient products that include fruits or vegetables but that have added ingredients that raise the level of certain nutrients, i.e., fat, saturated fat, cholesterol, and sodium, above levels found in raw or single ingredient versions of the same fruit or vegetable. The appearance of a ''healthy'' claim on such foods would represent them as being particularly useful in constructing diets that conform to current dietary guidelines. Such a representation would not necessarily be valid. While the agency recognizes that these foods have an appropriate place in the diet, the higher fat, saturated fat, cholesterol, or sodium levels in these products would make it misleading to represent them as products whose nutrient profiles would lend themselves to such use.

Furthermore, fruit and vegetable products that contain other ingredients are not precluded from bearing the term ''healthy,'' provided that the finished food meets all the criteria for the claim. Such foods can be formulated and fortified in accordance with the agency's policy on rational fortification in § 104.20 if they fail to contribute 10 percent of one of the subject nutrients. Therefore, FDA tentatively concludes that there is no reason to exempt such foods from the 10 percent requirement. Accordingly, the agency is not proposing to extend the exemption to all fruit and vegetable products.

B. Tentative Determination To Broaden Exemption

While the agency is not persuaded to extend the exemption to all fruit and vegetable products, it is persuaded that it may well be appropriate to broaden the exemption to include fruit and vegetable products other than raw fruits and vegetables and to include enriched cereal-grain products that conform to a standard of identity. In determining whether to broaden this exemption, FDA has to consider several questions similar to those raised when it first defined ''healthy.'' For example, does the nutrient contribution requirement, FDA's policy on rational fortification, or other FDA regulations preclude the use of the ''healthy'' claim on certain foods that play an important role in the diet and that dietary guidelines recommend be included in a healthy diet? Does the appearance of a ''healthy'' claim on raw fruits and vegetables and the absence of the claim on processed versions of the same fruits and vegetables, such as frozen vegetables or canned mushrooms packed in water, confuse and mislead consumers to believe that fruits and vegetables must be raw to be considered healthy? Moreover, does the absence of the claim on processed fruits and vegetables and standardized enriched cereal-grain products reduce the opportunity for encouraging consumption of these foods at a time when FDA and other government agencies have stated specifically that increased consumption of fruits, vegetables, and grain products can contribute significantly to a healthy diet?

Regarding fruits and vegetables, it is unlikely that most consumers are aware of the narrow exemption for raw fruits and vegetables provided in the ''healthy'' definition because, generally, most consumers are not familiar with the specific requirements of the nutrient content claim definitions. However, consumers are familiar with the overall concepts governing claims, that is, that

the claim be used consistently from food to food, that the claim be defined by FDA, and that the food bearing the claim meet the definition of the term being used. Foods bearing the term ''healthy'' will inform consumers that the food, because of its nutrient profile, is particularly useful in constructing diets that conform to current dietary guidelines.

Because of the likelihood that most consumers are unaware of the exemption for raw fruits and vegetables, consumers will likely not recognize that there are alternative fruit and vegetable products that are precluded from bearing the claim but that are just as useful as raw fruits or vegetables in assisting consumers in meeting dietary goals. Furthermore, it was not the intent of the agency to suggest that the goal of increasing fruits and vegetables in the diet could only be achieved by consuming raw products, or that raw products are necessarily superior to all other fruit and vegetable products. FDA acknowledges that there are processed fruit and vegetable products, like frozen fruits and vegetables, that can be used to assist consumers in constructing a diet that is consistent with dietary recommendations; but those foods are currently ineligible to bear the ''healthy'' claim because they do not meet the 10 percent nutrient contribution requirement.

C. Single Ingredient Fruit and Vegetable Products

FDA reviewed the data presented in AFFI's supplemental comments comparing nutrient profiles of selected raw fruits and vegetables and frozen, single ingredient versions of the same fruits and vegetables. While only preliminary, the data do support AFFI's argument that blanching and freezing do not significantly change the nutrient profile of the fruits and vegetables. These data provide examples of similar or higher nutrient levels of one or more of the six required nutrients in single ingredient, frozen fruit and vegetable products when compared to the raw version of the same fruit and vegetable. The higher nutrient levels found in the frozen version of the food are likely attributable to the fact that unprocessed fruits and vegetables may lose some of their nutrients over time or under certain storage conditions (Ref. 3).

Considering these data, the agency tentatively concludes that, like raw fruits and vegetables, single ingredient frozen fruits and vegetables can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines, even if particular products do not meet the 10 percent nutrient contribution requirement. Further, based on these data, the agency tentatively concludes that in cases where the nutrient profile of a single ingredient, frozen fruit or vegetable product is comparable to the nutrient profile of the raw version of the same fruit or vegetable, the single ingredient, frozen fruit or vegetable product would likely have the same effects, and could be used interchangeably in the diet to achieve dietary goals, as the raw version of the fruit or vegetable. Precluding such foods from being termed ''healthy'' could undermine an important element of current dietary guidance.

The agency tentatively concludes that such foods should not be barred from bearing the term ''healthy,'' especially when the foods are comparable to, and are just as useful as, raw fruits and vegetables in assisting consumers in structuring diets that achieve dietary goals. Furthermore, consumers should be informed that these foods serve as appropriate and useful alternatives to raw fruits and vegetables in constructing diets consistent with current dietary recommendations. Accordingly, FDA is proposing to amend § 101.65(d)(2)(iv) to exempt frozen, single ingredient fruit and vegetable products and mixtures of frozen, single ingredient fruit and vegetable products from the 10 percent nutrient contribution requirement.

However, FDA does not have information comparable to that submitted by AFFI to support extending this exemption to all single ingredient, processed fruit and vegetable products. The agency solicits comment and data on the effects of other types of processing, e.g., drying and canning, and how these processes affect the nutritional profile. If appropriate data are submitted, the agency is prepared to extend this exemption to other single ingredient, processed fruit and vegetable products in any final rule that issues in this proceeding.

D. Multi-Ingredient Fruit and Vegetable Products

In deciding to extend this exemption beyond raw fruits and vegetables, the agency must ensure that the claim is permitted only on those foods that contain nutrients in amounts that are consistent with the basis of the claim. As discussed above, FDA tentatively concludes that frozen, single ingredient fruit and vegetable products and mixtures of these foods are consistent with the basis of the ''healthy'' claim and should be permitted to bear the term, even if the food does not contain 10 percent of one of the six listed nutrients. However, FDA has not been persuaded that multi-ingredient products that are composed of ingredients other than fruits or vegetables and that meet all other aspects of the claim should be exempt from the 10 percent requirement. Many of these multi-ingredient fruit and vegetable products can have added ingredients that increase the content of fat, saturated fat, cholesterol, or sodium beyond that for the raw version. Considering that one reason that fruits and vegetables are helpful in achieving a diet consistent with dietary guidelines is that they can replace foods, such as snack foods and desserts, that contain higher levels of fat, saturated fat, cholesterol, and sodium, FDA tentatively concludes that providing an exemption for such multi-ingredient fruit and vegetable products would be inconsistent with current dietary recommendations and, consequently, inconsistent with the basis of the ''healthy'' claim.

Furthermore, consumers who rely on the appearance of the term ''healthy'' to construct a diet consistent with current dietary recommendations could be misled to believe that these multi-ingredient fruit and vegetable products are just as helpful as raw or frozen, single ingredient fruits and vegetables in achieving dietary goals, when in fact, they would increase dietary intake of less desirable nutrients and could decrease intake of micronutrients. Consumers could be motivated to select these multi-ingredient products rather than products comprised solely of fruits and vegetables. In the agency's opinion, a claim that could motivate consumers to choose fruit and vegetable products containing added ingredients that increase the content of fat, saturated fat, cholesterol, or sodium beyond that for the raw version as alternatives to the raw version or to the frozen, single ingredient version would not be beneficial for consumers and would undermine current dietary guidelines.

Moreover, FDA tentatively concludes that fruit and vegetable products composed of ingredients other than fruit or vegetable can be formulated and fortified in accordance with § 104.20 to meet the 10 percent contribution requirement, and, therefore, there is no reason to exempt such foods from the 10 percent requirement. Accordingly, FDA is not proposing to extend the exemption to multi-ingredient fruit and vegetable products composed of ingredients other than fruit or vegetable that do not contain 10 percent of one of the six listed nutrients.

E. Enriched Cereal-Grain Products

FDA finds merit in the arguments raised in the ABA petition. The agency

acknowledges that the requirements of the standards of identity for enriched cereal-grain products preclude reformulation and fortification to qualify the food to meet the 10 percent nutrient contribution requirement. As a result of the restrictions established in the standards, manufacturers of these products are not afforded the opportunity to reformulate and fortify the food to qualify the food to bear a ''healthy'' claim. Consequently, any action short of exempting such products from the 10 percent requirement or amending the standards of identity to increase the amount of enrichment nutrients that could be added to cereal-grain products, would mean that these foods could not bear a ''healthy'' claim. The agency does not have information on which to base a change in the individual standards, and the petitioner did not provide any.

Moreover, the agency acknowledges that increased consumption of grain products is recommended in current dietary guidelines, and that the appearance of a ''healthy'' claim on enriched cereal-grain products would encourage consumers to select these products as part of a healthy diet. The agency agrees with the arguments raised in the ABA petition that even though these foods do not contain at least 10 percent of one of the six listed nutrients, they are recommended in dietary guidance and can be particularly helpful in assisting consumers to achieve dietary goals. Thus, the agency tentatively concludes that enriched cereal-grain products that conform to a standard of identity are consistent with the basis and intent of the ''healthy'' definition and should not be precluded from bearing the term because they do not meet the 10 percent nutrient contribution requirement. Further, the agency tentatively concludes that precluding such foods from bearing the term ''healthy'' would be inconsistent with current dietary recommendations and not beneficial for consumers. Accordingly, FDA is proposing to amend the definition of ''healthy'' in § 101.65 to exempt enriched cereal-grain products that conform to a standard of identity in part 136, 137, or 139 from the 10 percent nutrient contribution requirement.

However, the agency is not persuaded that bread that does not conform to the standard of identity should be exempt from the 10 percent nutrient contribution requirement. Like other nonstandardized foods, nonstandardized bread can be formulated and fortified in accordance with § 104.20 to meet the 10 percent nutrient contribution requirement (see § 104.20(b)). Therefore, there is no reason to exempt these foods from the 10 percent requirement. Accordingly, FDA is not proposing to extend the exemption to bread that conforms to the standard of identity for enriched bread in § 136.115, except that it contains whole wheat or other grain products not permitted under that standard.

The approach that FDA is taking in this proposal is similar to the approach that it took in establishing the definition of ''healthy'' for seafood and game meats. In the healthy final rule (FR 59 24232 at 24249), FDA adopted different provisions for the use of the term ''healthy'' on raw, single ingredient seafood and game meat products with regard to the amount of fat, saturated fat, and cholesterol. FDA established different provisions for these foods, in part, because they would not qualify for the claim if held to the criteria of being ''low fat'' and ''low saturated fat'' because they are inherently higher in fat and in saturated fat than many other foods, yet some are recommended by the Surgeon General and the Food and Nutrition Board as foods to include in a healthy diet. In addition, these provisions are consistent with the provisions adopted by the USDA for use of the term ''healthy'' on meat and poultry products. However, FDA did not establish different provisions for seafood and game meat products that are composed of more than one ingredient because such foods can be reformulated to reduce the fat, saturated fat, and cholesterol levels inherently found in these foods. In this document, FDA is relying on the same general concept that it based its decision on in providing alternative criteria for raw, single ingredient seafood and game meats, namely that the agency would consider it inappropriate if the requirements in the definition of ''healthy'' precluded use of the claim for foods that play an important role in the diet and that dietary guidelines recommend be included in a healthy diet, especially in cases where manufacturers do not have the flexibility to reformulate the food to qualify to bear the claim.

The agency's primary goal in extending this exemption to other fruit and vegetable products and to enriched cereal-grain products that conform to a standard of identity is to permit the ''healthy'' claim on products that are particularly helpful in assisting consumers to achieve dietary goals yet are precluded from bearing the claim because they do not contain at least 10 percent of the subject nutrients, and they can not be reformulated to do so. The agency believes that the action that it is proposing in this document is fully responsive to the concerns raised by the petitioners and is appropriate because it will permit the ''healthy'' claim on fruit and vegetable products and on enriched cereal-grain products that are currently unfairly precluded from bearing the claim, yet prevent other products from inappropriately bearing the claim.

Accordingly, FDA is proposing to amend the definition of the term ''healthy'' by revising § 101.65(d)(2)(iv) to allow frozen fruit and vegetable products comprised solely of fruits and vegetables, and enriched grain products that conform to a standard of identity in part 136, 137, or 139 that do not contain 10 percent of vitamin A, vitamin C, calcium, iron, protein or fiber, but otherwise meet the requirement of the ''healthy'' definition to bear the term.

FDA tentatively concludes that the action that it is proposing is equitable and will provide consumers with information that will assist them in constructing diets that conform to all aspects of current dietary recommendations. The agency requests comment on its proposed rule and on whether such an extension of the exemption is necessary to ensure that consumers are not misled or confused by the current requirement that all foods except raw fruits and vegetables provide 10 percent of one of the six listed nutrients.

IV. Analysis of Impacts

FDA has examined the economic implications 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 effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that this proposed rule is not an economically significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

FDA is proposing to permit certain processed fruits, vegetables, and enriched cereal-grain products that conform to a standard of identity to bear this term. FDA has determined that these products are particularly helpful in assisting consumers to achieve dietary goals. The benefit of this

proposed rule is to provide more useful information to consumers.

The costs of this regulation will be incurred only by those manufacturers desiring to take advantage of the opportunity to use the term ''healthy.'' FDA cannot predict the number of manufacturers who will take advantage of this opportunity. Therefore, the agency cannot estimate the number of labels which will be revised as a result of this rule. However, FDA estimates that the cost of revising a label to include a ''healthy'' claim is approximately $3,000 per label.

V. Environmental Impact

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

VI. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no reporting, recordkeeping, labeling or other third party disclosure requirements; thus there is no ''information collection'' necessitating clearance by the Office of Management and Budget. However, to ensure the accuracy of this tentative conclusion, FDA is seeking comment on whether this proposed rule to amend the definition for the implied nutrient content claim ''healthy'' imposes any paperwork burden.

VII. Effective Date

FDA is proposing to make these regulations effective on the date of publication in the Federal Register.

VIII. Comments

Interested persons may, on or before April 29, 1996, submit to the Dockets Management Branch (address above) written comments regarding this 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.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Satchell, F. B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file, September 22, 1995, Modification of USDA's Nutrient Data Base for National Nutrient Databank Release 9, ''Processed Fruit and Vegetable Products that Qualify to Bear the Term 'Healthy,''' June 17, 1994, and July 17, 1995.

2. Satchell, F. B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file,'' Nutrient Profiles of Marketplace Fruit and Vegetable Products that Qualify to Bear the Term 'Healthy,''' October 10, 1995.

3. Karmas, E., and R. S. Harris, ''Nutritional Evaluation of Food Processing, Third Edition,'' Van Nostrand Reinhold Co., Inc., New York, chapters 3, 4, and 11, 1988.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.65 is amended by revising paragraph (d)(2)(iv) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

* * * * *

(d) * * *

(2) * * *

(iv) Except for raw or frozen fruit or vegetable products comprised solely of fruits and vegetables and for enriched grain products that conform to a standard of identity in parts 136, 137, or 139 of this chapter, the food contains at least 10 percent of the RDI or DRV per reference amount customarily consumed, per labeled serving of vitamin A, vitamin C, calcium, iron, protein, or fiber;

* * * * *

Dated: January 26, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–2980 Filed 2–9–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC33

Shenandoah National Park, Recreational Fishing

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to remove the special fishing regulations for Shenandoah National Park. The general NPS fishing regulations and the regulations on closures and public use limits are sufficient to allow for the proper management of fishing at Shenandoah National Park. This duplication of regulations is often confusing and unnecessary.

DATES: Written comments will be accepted through April 12, 1996.

ADDRESSES: All comments should be addressed to: Superintendent, Shenandoah National Park, Route 4 Box 348, Luray, VA 22835.

FOR FURTHER INFORMATION CONTACT: Greg Stiles, Leader, Resource and Visitor Protection Services, Shenandoah National Park, Route 4 Box 348, Luray, VA 22835, Telephone (540) 999–3401.

SUPPLEMENTARY INFORMATION:

Background

The fishing regulations that are currently in use for Shenandoah National Park are codified at 36 CFR 7.15(a). These regulations: (1) Permit recreational fishing in selected streams of the Park as designated by the Superintendent; (2) establish seasons, creel and size limits; and (3) establish licensing requirements. This proposed rulemaking will delete subsection 7.15(a) of 36 CFR pertaining to recreational fishing in Shenandoah National Park and exclusively adopt the general regulations found at 36 CFR 1.5 (Closures and public use limits) and 2.3 (Fishing). Inherent to this proposal is the need to provide for protection and management of the Park's fisheries resources and to encourage partnerships with state agencies through regulatory review.

Section-by-Section Analysis

1. *Open Waters and Applicability.* The general regulations for Fishing, found at 36 CFR 2.3, establish that fishing in the parks, except in designated areas, will be in accordance with nonconflicting State laws and regulations within whose exterior

boundaries a park area is located. Existing State fishing regulations are sufficient for the proper management of the fisheries at Shenandoah National Park. The opening, closing and public use limits for recreational fishing in the park requires an annual review by park management. Any possible changes in public use associated with fisheries resources is adequately covered in 36 CFR 1.5. Therefore, special regulation 36 CFR 7.15(a)(1) Open Waters is not necessary and will be removed.

2. *Applicability.* Because the NPS is proposing to remove all special regulations pertaining to fishing, a separate paragraph on the applicability of special fishing regulations in § 7.15 is not necessary. Therefore, 36 CFR 7.15(a)(2) Applicability, will be removed.

3. *Season.* The State of Virginia has established a year-round open season to permit fishing in all state-designated trout streams. Special regulation 36 CFR 7.15(a) established an opening date that coincided with the State opening date, which no longer exists. However, 36 CFR 2.3 Fishing provides for recreational fishing, except in designated areas, in accordance with the laws and regulations of the State. 36 CFR 1.5(a)(2) allows the park to designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity. This will allow the park to establish limits in certain designated areas when necessary. Therefore, 36 CFR 7.15(a)(3) is no longer needed and will be removed.

4. *License.* 36 CFR 2.3 establishes that fishing in the parks will be in accordance with State laws. All persons 16 years and older fishing in Shenandoah National Park must have a Virginia State fishing license in his/her possession. Since there is no need for a special regulation for licensing, 36 CFR 7.15(a)(4) will be removed.

5. *Size and Creel Limits.* The State of Virginia has increased the minimum size limit for trout from eight inches to nine inches and has a maximum creel limit of six fish, compared to the current limit of five fish in the park. To avoid confusion and to be consistent with the limits established by the State, the park will use the State's limits. Size and creel limits for other species of game-fish caught in the park will also be the same as those limits designated by the State of Virginia. Special regulations concerning size and creel limits are not needed as 36 CFR 2.3 Fishing would apply. Therefore, 36 CFR 7.15(a)(5) and 36 CFR 7.15(a)(6) will be removed.

6. *Lures; bait.* 36 CFR 2.3 Fishing currently regulates the use of bait, and the State of Virginia permits only the use of a single hook, which may be barbed or barbed-less. A special regulation concerning lures and bait is not necessary, therefore 36 CFR 7.15(a)(7) will be removed.

7. *Fish for Fun.* The term ''fish for fun'' is normally associated with activities provided by fish stocking programs in specially designated streams. Fish stocking does not occur within the Park. However, the State law for ''Catch and Release'' adequately allows for the protection of native and non-native fish populations on designated streams. 36 CFR 1.5(a)(2) and 36 CFR 2.3(a) allow for the designation of ''Catch and Release'' streams that are consistent with State regulations. Therefore, 36 CFR 7.15(a)(8) is not necessary and will be removed.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information: The process used to develop this proposed rule included numerous reviews by Park staff, consultations with Virginia Department of Game and Inland Fisheries Biologists and consultations with numerous fisheries biologists from other parks, agencies, research institutions and organizations. The primary authors of this rulemaking are William J. Cook, Center for Resources and Greg Stiles, Resource and Visitor Protection Services, Shenandoah National Park; and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

This proposed rulemaking is consistent with and supportive of Executive Order 12962, Recreational Fisheries, issued June 7, 1995. Through this Executive Order, Federal Agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity and distribution of U.S. aquatic resources for increased recreational fishing opportunities. Establishment of this rulemaking is consistent with the extent and purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–d, and e–j), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801–1882).

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k), Section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.15 [Amended]

2. Section 7.15 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as new paragraphs (a) through (c).

Dated: December 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–3008 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–70–P

36 CFR Part 17

RIN 1024–AC27

Conveyance of Freehold and Leasehold Interests

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise portions of the regulations for conveyance of freehold and leasehold interests on lands administered by the NPS. The proposed rule would allow bids for freehold and leasehold interests on lands to be accompanied by earnest money equivalent to 2 percent of the appraised value or $2,500, whichever is greater, with the balance of the bid due within 45 days of the award. The NPS has experienced problems selling parcels of real estate under the current regulations, which require that bids be accompanied by certified checks, post office money orders, bank drafts or cashier's checks for the full amount of the bids. The proposed changes to the regulations address this issue and will correct the problem identified with the current regulations. With these proposed changes, the NPS will be able to convey freehold and leasehold interests on federally owned lands.

The proposed revision also provides for a time frame for submitting the balance of the bid and describes what occurs if the successful bidder is unable to obtain the necessary financing in the case of a freehold interest. The NPS proposes to revise and amend the current regulations on action at close of bidding, by allowing 45 days from the time of bid award to submit the balance due. Failure to submit the full bid price within 45 days would result in forfeiture of $1,000 of the deposited bid amount and the property would be awarded to the next highest bidder.

DATES: Written comments will be accepted through April 12, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, OH 44141, Telephone (216) 546–5903.

FOR FURTHER INFORMATION CONTACT: Jeff Winstel, Historian, Cuyahoga Valley National Recreation Area, 15160 Vaughn Road, Brecksville, OH 44114, Telephone (216) 546–5975.

SUPPLEMENTARY INFORMATION:

Background

The current NPS regulations regarding conveyance of freehold and leasehold interests on land are codified in 36 CFR part 17. They authorize sale of Federal real property acquired from non-Federal sources.

On June 3, 1993, Cuyahoga Valley National Recreation Area, a unit of the National Park System, held a bid opening for the purpose of selling 1.13 acres of improved federally owned land. Improvements included an historic three-bedroom residence; a detached, single car garage; and two small sheds. Historic preservation deed restrictions were placed on the structures and scenic deed restrictions were placed on the land.

The property was marketed extensively. It was listed in the Federal Register, advertised in a local paper for five consecutive weeks, marketed with a local realtor, listed in the Multiple Listing Service, advertised on local television channels, and open houses were held on four days. There was considerable interest in the property with 180 prospective buyers attending the open houses and private showings. Interviews with park officials by news media reporters regarding the property appeared on local TV stations and in local newspapers.

There was not a single bid received for the property on June 3rd. This lack of response was a concern and inquiries were made of 50 people who had attended the open houses and expressed a sincere interest in buying the property. The major reason given for not bidding was the requirement that the full amount of the bid be enclosed with the bid. No financial lending institution would approve this type of arrangement.

The NPS is therefore proposing to amend this regulation. The NPS proposes that the sixth sentence of 36 CFR 17.5 be amended as follows: ''Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for 2 percent of the fair market value or $2,500, whichever is greater, in the case of a freehold interest or for the amount of the first year's rent in the case of a leasehold interest.''

The NPS also proposes to amend 36 CFR 17.6 by adding the following three (3) sentences to the end of the section: ''In the case of a freehold interest the high bidder must submit the balance of the bid within 45 days of the bid award in the form of a certified check, post office money order, bank draft or cashier's check made payable to the United States of America. Failure to submit the full balance within 45 days will result in forfeiture of $1,000 of the bid deposit (unless the bidder has been released from the bid or an extension has been granted by the authorized officer) and the property will be awarded to the next highest bidder upon fulfillment of the requirements herein.''

The proposed changes will improve the existing regulations by permitting prospective bidders to participate without an outlay of a large sum of cash. The NPS anticipates that the amended regulation will facilitate ''sellback'' of historic structures that can be most effectively preserved through private ownership rather than public ownership. The historic and scenic values of the properties will be protected through deed restrictions.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review comments and consider making changes to the final rule based upon an analysis of the comments.

Drafting Information: The primary author of this regulation is John P. Debo, Jr. Superintendent, Cuyahoga Valley National Recreation Area.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character

of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 17

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 17—CONVEYANCE OF FREEHOLD AND LEASEHOLD INTERESTS ON LANDS OF THE NATIONAL PARK SYSTEM

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

Authority: Sec 5(a) of the Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 460l-22(a).

2. Section 17.5 is amended by revising the sixth sentence to read as follows:

§ 17.5 Bids.

* * * Bids must be accompanied by certified checks, post office money orders, bank drafts, or cashier's checks made payable to the United States of America for 2 percent of the amount of the fair market value or $2,500, whichever is greater, in the case of a freehold interest or for the amount of the first year's rent in the case of a leasehold interest. * * *

3. Section 17.6 is amended by adding two sentences to the end of the section, to read as follows:

§ 17.6 Action at close of bidding.

* * * In the case of a freehold interest the high bidder must submit the balance of the bid within 45 days of the bid award in the form of a certified check, post office money order, bank draft, or cashier's check made payable to the United States of America. Failure to submit the full balance within 45 days shall result in the forfeiture of $1,000 of the bid deposit, unless the bidder has been released from said bid or an extension has been granted by the authorized officer, and the property will be awarded to the next highest bidder upon fulfillment of the requirements of this section.

Dated: December 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–3007 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH39

Veterans Education: Course Measurement for Graduate Courses

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the ''ADMINISTRATION OF EDUCATIONAL BENEFITS'' regulations to provide that all undergraduate courses taken by graduate students are to be measured by the graduate school (full time, half time, quarter time, etc.) or by the formula used for measuring undergraduate courses for undergraduate students, whichever results in a higher monthly rate for the veteran. Students receive benefits based on the assessment of their training time (full time, half time, quarter time, etc.). It appears that graduate schools, often with unique programs, have the most expertise for assessing the training status for their own programs. Also, it appears that they realistically report the training status of graduate students. Even so, we do not believe that graduate students should be paid a lower monthly rate than undergraduate students for the same training. Hence, it appears that the adoption of this change would streamline the process while yielding equitable results.

DATES: Comments must be received on or before April 12, 1996.

ADDRESSES: Send written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington DC 20001. Comments should indicate that they are submitted in response to ''RIN 2900–AH39.'' All written comments received will be available for public inspection only in the Office of Regulations Management between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the ''ADMINISTRATION OF EDUCATIONAL BENEFITS'' regulations (set forth at 38 CFR subpart D and referred to below as the regulations) students receive benefits based on the assessment of their training time (full time, half time, quarter time, etc.). This document proposes to amend the regulations by changing the method of measuring training time for undergraduate courses that are taken by graduate students.

VA regulations specify, with certain exceptions, that undergraduate students pursuing undergraduate courses of 14 hours for standard terms are to be designated as full-time students. VA regulations contain corresponding provisions for less than full time (half time, quarter time, etc.). These measurement provisions for undergraduate students are mandated by statutory requirements (38 U.S.C. 3688). The current regulations measure the enrollment of graduate students in undergraduate courses in the same manner as for undergraduate students. However, the current regulations measure the enrollment of graduate students in graduate courses according to the school's assessment of part-time or full-time training status rather than using a formula.

Accordingly, if a graduate student enrolled for a combination of seven undergraduate credit hours (which is half time under the statutory 14 credit-hour full-time system), and a number of graduate hours assessed as half time by his or her school, then the graduate student would be considered a full-time student for VA education purposes.

The provisions of 38 U.S.C. 3688 state that VA has discretion in determining how to measure graduate courses. Consistent with this authority, this document proposes to amend the regulations to provide for all undergraduate courses of graduate students to be measured by the graduate schools' assessment (full time, half, quarter time, etc.) or by the formula used for measuring undergraduate courses for undergraduate students, whichever results in a higher monthly rate for the veteran.

Based on Department expertise, it appears that graduate schools, often with unique programs, have the most expertise for assessing the training status for their own programs. Also, it appears that they realistically report the

training status of graduate students. Even so, we do not believe that graduate students should be paid a lower monthly rate than undergraduate students for the same training. Hence, it appears that the adoption of the proposal would streamline the process while yielding equitable results.

Also, the proposal contains a nonsubstantive change to 38 C.F.R. 21.4273(a)(2) for purposes of clarity.

The Secretary of Veterans Affairs certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.117, 64.120, and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 1, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart D is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35 and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4273, paragraph (a)(2) is amended by removing ''assessed'' and adding, in its place, ''measured''; and paragraph (c) is revised and its authority citation is added to read as follows:

§ 21.4273 Collegiate graduate.

* * * * *

(c) *Undergraduate or combination.* If a graduate student is enrolled in both graduate and undergraduate courses concurrently, or solely in undergraduate courses, VA will measure such an enrollment using the provisions of § 21.4272 or the graduate school's assessment of training time, whichever will result in a higher monthly rate for the veteran.

(Authority: 38 U.S.C. 3668(b))

[FR Doc. 96–2950 Filed 2–9–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–041–1–9604b; FR–5345–6]

Approval and Promulgation of Implementation Plans Alabama: Revisions to the Alabama Department of Environmental Management Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Alabama through the Department of Environmental Management on August 14, 1995, the State of Alabama through the Department of Environmental Management (ADEM) submitted a State Implementation Plan (SIP) submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. These revisions involve changes to Chapter 335–3–14—Air Permits, and were made to comply with the requirements of the Clean Air Act (CAA). In the final rules section of this Federal Register, the EPA is approving the State of Alabama's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 13, 1996.

ADDRESSES: Written comments on this action should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA 30365

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4195 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: December 4, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–2965 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 33–3–7130b; FRL–5339–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Santa Barbara County, Ventura County, Monterey Bay Unified, and Placer County Air Pollution Control District; and Yolo Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the following: the coating or assembly of

aircraft or aerospace vehicle parts and products, the use of organic solvents and organic solvent cleaners, the coating of miscellaneous metal parts and products, the application of adhesives, and the coating of flat wood paneling.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 13, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Air and Toxics Division, Rulemaking (A–5–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns SBCAPCD Rule 337—Surface Coating of Aircraft or Aerospace Vehicle Parts and Products, VCAPCD Rule 74.13—Aerospace Assembly and Component Manufacturing Operations, MBUAPCD Rule 416—Organic Solvents, MBUAPCD Rule 433—Organic Solvent Cleaning, MBUAPCD Rule 434—Coating of Metal Parts and Products, YSAQMD Rule 2.25—Metal Parts and Products Coating Operations, YSAQMD Rule 2.33—Adhesives Operations, PCAPCD Rule 238—Factory Coating of Flat Wood Paneling, submitted to EPA on January 24, 1995, April 5, 1991, July 13, 1994, September 28, 1994, September 28, 1994, November 30, 1994, November 30, 1994, and October 13, 1995, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–2970 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MS–15–1–6252b; MS–20–2–9605b; FRL–5401–1]

Approval and Promulgation of Implementation Plans Mississippi: Approval of Revisions to the Mississippi State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 14, 1991, and January 26, 1994, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) submitted revisions to the Mississippi State Implementation Plan (SIP). These SIP revisions incorporate changes to Regulation APC-S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants''. The major sections being revised include: Section 1. General, Section 2. Definitions, Section 3. Specific Criteria for sources of Particulate Matter, Section 6. New Sources, Section 8. Provisions for Hazardous Air Pollutants, Section 9. Stack Height Considerations, and Section 11. Severability.

The regulation amendments and revisions were the subject of public hearings held on March 27, 1991, and November 24, 1993, and became state effective on May 28, 1991, and January 9, 1994, respectively. EPA is approving the amendments to Regulation APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants'' because these revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 13, 1996.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.
Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is (404) 347–3555 ext. 4216.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: November 1, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–2963 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NE–7–1–7154b; FRL–5399–6]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. In the final rules' section of the Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 13, 1996.

ADDRESSES: Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Dated: November 14, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–2976 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[PA 70–1–7207b; FRL–5338–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NOx RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on one major source and establishes permit conditions to limit eight source's emissions to below major source levels. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be amended to withdraw any permits that are the subject of adverse comments. Public comments will be addressed in a subsequent final rule based on this proposed rule. Only those permits for which EPA receives adverse comments will be addressed by this subsequent rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 13, 1996.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554, at the EPA Region III address above, or by E-mail at Rehn.Brian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules and Regulations Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 24, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 96–2968 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[PA084–4018; FRL–5419–3]

Pennsylvania; Approval and Promulgation of Air Quality Implementation Plans; Revocation of Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley Ozone Nonattainment Area and Reinstatement of Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is providing notification of its determination that the Pittsburgh-Beaver Valley ozone nonattainment area is no longer attaining the National Ambient Air Quality Standard (NAAQS) for ozone, based on monitored violations of the standard during the 1995 ozone season. EPA is also reinstating the applicability of certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Pittsburgh-Beaver Valley nonattainment area because the area is no longer in attainment for ozone.

DATES: Comments must be received on or before March 13, 1996.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545, at the EPA Region III office, or via e-mail at henry.kathleen@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

In a memorandum dated May 10, 1995, from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', EPA stated that it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require certain SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard.

On the basis of this memo, EPA determined, in a direct final rule (DFR) published on May 26, 1995 (60 FR 27893), that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas had attained the standard and that the requirements of section 182(b)(1) concerning the submission of a 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures no longer applied, so long as these areas did not violate the ozone standard. In addition, EPA determined that the sanctions clocks started on January 18, 1994, for these areas for failure to submit the RFP requirements were stopped since the deficiencies for which they were commenced no longer applied.

At the same time that EPA published the DFR, a separate notice of proposed rulemaking (NPR) was published in the Federal Register (60 FR 27945) in the event that adverse comments were filed which would require EPA to withdraw the DFR. EPA received adverse comments within 30 days of publication of the proposed rule and withdrew the DFR on June 13, 1995 (60 FR 31081).

On July 19, 1995, EPA published a final determination (60 FR 37015) that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas had attained the ozone standard and that the SIP requirements for reasonable further progress and attainment demonstrations no longer applied so long as these areas did not violate the ozone standard. The notice also stated that the sanctions clocks started on January 18, 1994, for these areas for failure to submit the RFP requirements were stopped. (The effective date of the final determination occurred one day after the sanction clocks expired and these areas were, in fact, under the offset sanction at the time of EPA's final determination. However, the sanctions were lifted as a result of EPA's final determination for the same reason that the final determination would have stopped the sanctions clocks).

The specific rationale and air quality analysis EPA used to determine that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas had attained the NAAQS for ozone and were not required to submit SIP revisions for RFP, attainment demonstration and related requirements were explained in the May 26, 1995, DFR and will not be restated here. Regarding the consequences of subsequent violations, however, that DFR stated that if either of these areas violated the standard, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. Furthermore, such a determination of nonattainment would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time. In fact, the DFR stated that a determination that an area need not submit these SIP requirements is, in effect, a suspension of these requirements for so long as the area continues to attain the standard. For both the Pittsburgh-Beaver Valley and Reading nonattainment areas, a final determination that a violation occurred would cause sanctions to be reinstated one day into the 2:1 offset sanction period.

II. 1995 Violation of the NAAQS for Ozone in the Pittsburgh-Beaver Valley Area

EPA has reviewed the 1995 ambient air quality data (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Pittsburgh-Beaver Valley ozone nonattainment area, and determined that the area is no longer in attainment. During the 1995 ozone season two monitors in the Pittsburgh area recorded violations of the ozone NAAQS. In addition, ambient air quality monitors in the Pittsburgh-Beaver Valley area recorded 17 exceedances of the ozone standard. The current design value for the Pittsburgh-Beaver Valley nonattainment area, computed using the ozone monitoring data for 1993 through 1995, is 133 parts per billion (ppb). The average annual number of expected exceedances is 8.2 for that same time period. An area is considered in nonattainment when the average annual number of expected exceedances is greater than 1.0. A more detailed summary of the ozone monitoring data for the area is provided in the Technical Support Document for this notice.

PROPOSED ACTION: Due to the monitored violations of the ozone standard, EPA has determined that the air quality in the Pittsburgh-Beaver Valley moderate ozone nonattainment area is no longer attaining the ozone standard. As a consequence, EPA is proposing to reinstate the requirements of section 182(b)(1) concerning the submission of the 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures. In order to provide a reasonable time for the State to develop and submit these SIP elements, EPA is proposing August 15, 1996, as the effective date for revoking the determination of attainment, reinstating these SIP requirements, and reinstating sanctions and the sanctions period in effect as of July 19, 1995. Thus, the offset sanction would go back into effect on that day and the highway sanction clock would be reinstated where it was stopped on July 19, 1995 (i.e., with approximately 6 months remaining). Sanctions will not be

imposed if the Commonwealth submits a 15% plan, attainment demonstration and related contingency measures for the Pittsburgh-Beaver Valley nonattainment area that EPA finds complete prior to August 15, 1996, since the deficiency for which sanctions were imposed will no longer exist. If the Commonwealth fails to make these submittals before the proposed effective date, sanctions will be imposed until EPA receives the submittals and deems them complete.

EPA believes that, under the circumstances presented here, setting an effective date of August 15, 1996, would provide the Commonwealth a reasonable amount of time to submit a 15% RFP plan, ozone attainment demonstration and contingency measures.

EPA's belief is based on the fact that by August 15, 1996, more than a year will have passed since the occurrence of violations that resulted in reinstatement of these requirements. EPA's May 26, 1995, DFR and July 19, 1995, final determination put the Commonwealth on notice that these requirements would be reinstated if a violation occurred. Since the Commonwealth has been aware of the violations and their consequences since last summer, EPA believes that August 15, 1996, constitutes sufficient time for the Commonwealth to prepare to meet the reactivated requirements.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but reinstates previously applicable requirements that had been suspended. Therefore, because this document does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

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

EPA has determined that the proposed action 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 imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

The Administrator's decision to determine that the Pittsburgh-Beaver Valley ozone nonattainment area is no longer attaining the NAAQS for ozone will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 30, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–2973 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI60–01–7136b; FRL–5324–6]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on June 14, 1995. This revision consists of a volatile organic compound (VOC) regulation to control emissions from autobody refinishing operations in ozone nonattainment areas classified as moderate or worse. In the final rules of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by March 13, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 10, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–2961 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[Region II Docket No. 149, NJ26–1–7294; FRL–5409–5]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision States of New York, New Jersey and Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of Comment.

SUMMARY: Section 211(m) of the Clean Air Act requires that the Administrator determine the period prone to high ambient concentrations of carbon monoxide (CO) for each area requiring an oxygenated gasoline program under that section. EPA previously proposed to determine that the period when the New York-Northern New Jersey-Long Island consolidated metropolitan statistical area is prone to high ambient concentrations of CO extends from November 1 to the last day of February. *See* 60 FR 47911 (September 15, 1995). EPA is here soliciting comment on that proposed determination for a limited purpose, to invite comment on additional information concerning emission modeling and data for the New Jersey portion of the area.

DATES: Comments must be received in writing on or before March 13, 1996.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866 Attention: William S. Baker.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Library 16th Floor, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

Motor vehicles are significant contributors of CO emissions, which are harmful to human health. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen in the fuel enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting in cold weather.

Section 211(m) of the Clean Air Act (Act) requires certain states with areas that are nonattainment for the CO National Ambient Air Quality Standards to implement oxygenated gasoline programs for the period that the areas are prone to high ambient concentrations of CO. The Administrator is to determine this control period for each area. States with CO nonattainment areas at or above a 9.5 parts per million (ppm) design value must implement oxygenated gasoline programs by November 1, 1992 and submit these programs as SIP revisions.

The section 211(m) requirement applies to New Jersey, New York and Connecticut because these states each contain a portion of the New York-Northern New Jersey-Long Island nonattainment area, which has a design value for CO above 9.5 ppm. The requirement had also originally applied to Southern New Jersey as well; however that area, which is part of the Philadelphia CO nonattainment area, is currently in attainment for CO and, as such, is no longer required to implement an oxygenated gasoline program. 60 FR 62741, December 7, 1995. The New York-Northern New Jersey-Long Island CO nonattainment area is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA) and includes the New Jersey Counties of Bergen, Essex, Hudson, Union, and parts of Passaic. The nonattainment area in Passaic County includes the Cities of Clifton, Paterson, and Passaic. New Jersey's portion of the larger CMSA, within which oxygenated fuel sale is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Ocean, Passaic, Somerset, Sussex, Union and Warren.

On September 15, 1995, in the course of action on the New York CO SIP, EPA proposed to find that the appropriate length of the control period for the entire New York-Northern New Jersey-Long Island CMSA is four months (60 FR 47911). EPA also proposed to approve New York's oxygenated fuels program and, in a separate notice, Connecticut's oxygenated fuels program, both for a four-month control period (60 FR 47907, 60 FR 47911, September 15, 1995). On December 7, 1995, EPA published a direct-final rule (with an accompanying proposal) to redesignate the Southern New Jersey Camden County CO nonattainment area to attainment. (60 FR 62741). Finally, in a related document published in the Final Rules section of today's Federal Register EPA is issuing a final limited approval of New Jersey's request to revise its CO State Implementation Plan (SIP) to incorporate New Jersey's oxygenated gasoline program for the Northern New Jersey portion of the New York-Northern New Jersey-Long Island CMSA as it applies for the four months from November 1 through the last day of February.

Length of Control Period

The following information, provided for background purposes only, summarizes certain information provided in the proposed determination.

The Act provides for EPA to determine a single period during which an entire nonattainment area is prone to high ambient concentrations of CO. This uniform control period will apply, at least as a minimum, to each state's portion of a multi-state nonattainment area. EPA previously proposed a determination of the period prone to high ambient concentrations of CO for the New York-Northern New Jersey-Long Island CMSA. 60 FR 47911, (September 15, 1995). The comment period on that proposed determination closed on October 15, 1995, and EPA received no comments on the issue of the control period determination.

EPA has applied established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York-Northern New Jersey-Long Island CMSA. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York-Northern New Jersey-Long Island CMSA was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs.

Section 211(m), cited in the 1992 EPA guidance, requires control period length to be decided by the EPA Administrator based on the period an area is prone to high CO concentrations. The three-state New York-Northern New Jersey-Long Island CMSA has not recorded an exceedance of the CO national ambient air quality standard (NAAQS) in the

three months proposed to be dropped since October of 1991. Furthermore, since 1992 the CMSA has not been prone to high ambient concentrations of CO during those three months. Under the approach used in EPA's guidance, ''prone to high ambient concentrations of carbon monoxide'' is a criterion more stringent than the NAAQS, in that the CO levels which characterize an area as being prone to high CO concentrations during a specific period may be lower than the NAAQS and therefore not necessarily exceed it.

EPA believes that implementation of new programs under the Clean Air Act in each state in the CMSA will adequately ensure continued observance of reduced levels of CO during the months of October, March and April. Reformulated gasoline (RFG) is a year round clean gasoline program, which provides gasoline oxygenated to 2.0 percent. This program was initiated on January 1, 1995, in the CMSA (see 59 FR 7716, February 16, 1994). EPA believes that implementation of an enhanced inspection and maintenance (I/M) program [40 CFR Part 51, Subpart S] and the turnover of the New York-Northern New Jersey-Long Island CMSA fleet to newer, cleaner vehicles, combined with the use of RFG will ensure continued lower CO emissions from motor vehicles for the CMSA during October, March and April, even in the absence of the higher minimum oxygen content.

While the established guidance bases the determination of control period only on air quality monitoring data (which exists for the entire New York-Northern New Jersey-Long Island CMSA for 1992 to 1995), EPA believes that it is prudent also to provide a technical analysis further supporting the reduction of oxygen content during the shoulder months in the area. EPA performed a series of computer model runs to support the contention that in future years, starting with Autumn 1996, without sales of gasoline oxygenated to 2.7 percent, but with implementation of federal RFG and enhanced I/M (or an inspection program deemed equivalent thereto), combined with vehicle turnover, CO emissions will continue to be lower during October, March and April in the area.

Since, after the implementation of the oxygenated fuels program, the first observance of low CO levels during those months was in 1993, average vehicle emissions from that year were used as an upper limit in determining the adequacy of CO control without higher oxygen content in October, March and April. Modelled levels of CO below the levels observed in the shoulder months in 1993 will provide further assurance that the shorter control period will not result in high CO levels during those three months.

Solicitation of Comment

EPA invites comment on the following information, which EPA believes provides additional support for its proposed determination regarding the appropriate control period for this CMSA. The solicitation of comment is therefore limited to comments related to this additional information. EPA is not soliciting comment for any other purpose, and will not consider as timely any comments addressing other points.

EPA performed a comparison of average vehicle emissions using the most current version of EPA's emission factor model for mobile sources, MOBILE5a. All modeling assumed implementation of RFG (with 2.0 percent oxygen content) and implementation of an enhanced I/M program (or an equivalent inspection program) in New Jersey for the 1996–1997 season and future CO seasons. MOBILE5a variables such as vehicle speeds and a vehicle miles traveled growth rate were specific to New Jersey (supplied by the New Jersey Department of Environmental Protection and the New Jersey Department of Transportation). For further details regarding the MOBILE5a runs and the subsequent comparisons, the reader is referred to the technical support document for this notice and the related notice issuing a limited approval for New Jersey's program.

Modeling further assures that after removing 2.7 percent oxygenated gasoline, but accounting for the effects of RFG, enhanced I/M and vehicle turnover, vehicle emissions of CO, through calendar year 2020 (based on an average day in the CO season in each of those years), will still be at least 18 percent less than vehicle emissions of CO in 1993 with 2.7 percent oxygenated gasoline during October, March and April. This supports EPA's belief that, even with elimination of oxygenated gasoline program requirements in the shoulder months in the area, the area will not be prone to ''high'' ambient concentrations during those months. The modeling results do not affect EPA's determination that a four month control period complying with the statutory minimum length is still required. Should future ambient air quality data show that high CO levels do in fact occur in the shoulder months, contrary to EPA's predictions, EPA would reevaluate its determination of the period prone to high ambient concentrations of CO.

Dated: January 19, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–2582 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 440

[WH–FRL–5419–1]

RIN 2040–AC74

Amendment to Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the applicability of certain effluent limitations guidelines and new source performance standards governing mines with froth-flotation mills to the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska. Specifically, EPA is proposing to exempt dewatered tailings produced by the proposed A–J mine and mill from effluent guidelines based on best practicable control technology (BPT) and best available control technology economically achievable (BAT), and from new source performance standards (NSPS) that appear at 40 CFR part 440, subpart J. EPA also is proposing that a definition of ''dewatered tailings'' be added to 40 CFR part 440, subpart L. EPA is issuing today's proposal because the use of a tailings impoundment was part of the technology basis for the BPT, BAT, and NSPS requirements of subpart J; however, it appears that extreme topographic and climatic conditions at the A–J project site render it impractical to treat and dispose of tailings in a tailings impoundment so as to meet the requirements of subpart J. EPA would not take action to finalize this proposal if a feasible alternative for tailings treatment is identified that would obviate the need for the exemption. EPA expects to make a final determination with respect to this proposal by the end of 1996. Since this proposed rule is deregulatory in nature, no costs are estimated. The benefit of this proposed rule is the potential for increased flexibility in permitting the disposal of tailing wastes from the gold mine and mill operations, resulting in the mitigation of environmental impacts. Costs and benefits resulting from this action will be determined as part of the environmental assessment of feasible alternatives. During the preparation of this proposed rule, the Agency held

consultations with State and local governments, industry, and public interest group representatives.

DATES: Comments on this proposal must be submitted on or before April 12, 1996, except for comments concerning technological alternatives for the A–J project site. The comment period on that issue will be open until August 12, 1996. A series of public meetings concerning the exclusion of dewatered tailings from coverage of 40 CFR part 440, subpart J is being planned for the Spring of 1996 during the extended comment period. The times and locations of these meetings will be published in the Federal Register and local newspapers when they are finalized.

ADDRESSES: Send comments to Ore Mining Comment Clerk, Water Docket Mail Code 4101, Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460. Commenters are requested to submit an original and three copies of their comments, enclosures or references. The supporting information and all comments on this proposal will be available for inspection and copying at the Water Docket, located in Room L102 at the above address. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald G. Kirby at (202) 260–7168.

SUPPLEMENTARY INFORMATION:

A. Legal and Regulatory Background

EPA issued effluent limitations guidelines for the ore mining and dressing point source category based on Best Practicable Technology (BPT) on July 11, 1978 (43 FR 29771). Effluent limitations guidelines based on Best Available Technology (BAT) and New Source Performance Standards (NSPS) were issued on December 3, 1982 (47 FR 54598). These are codified at 40 CFR part 440. Detailed engineering, technical and cost information supporting the ore mining and dressing guidelines and standards are summarized in reports entitled Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category, Volume I and II July 1978, EPA # 440/1–78/061d and e (''1978 Development Document'') and Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category, EPA # 440/1–82/061, November 1982 (''1982 Development Document''). The economic analysis for NSPS in part 440 is summarized in Economic Analysis of New Source Performance Standards for the Ore Mining and Dressing Industry, November 1982. These documents and the rest of the supporting public record for the part 440 guidelines and standards are available for review at the EPA Water Docket and are part of the record for this proposal.

BPT limitations generally represent the average of the best existing waste treatment performance within an industry subcategory. BAT limitations generally represent the best existing performance in the industrial subcategory or category. In establishing BAT, the Agency considers such factors as the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction and nonwater quality environmental impacts. NSPS are based on the best available demonstrated technology. In general, the best available demonstrated technology consists, in part or completely, of the same technology as that determined for BAT for existing sources within an industry. However, in some cases it is determined that new plants have the opportunity to install more efficient production processes and wastewater treatment technologies than existing sources. In such cases, NSPS may be established at a level more stringent than BAT. While EPA bases effluent limitations guidelines and new source performance standards on identified technologies, dischargers are not required to use any particular technology. They may meet the effluent limitations and standards using any technology they determine is appropriate.

Effluent limitations guidelines and new source performance standards applicable to Copper, Lead, Zinc, Gold, Silver, and Molybdenum ore mines, including mines with froth-flotation mills, appear at 40 CFR part 440, subpart J (''Subpart J'').

B. Technical Information

Gold mining has historically occurred in the Alaskan region near Juneau. Economic conditions have improved in recent years, stimulating continued extraction of this valuable resource. Due to improvements in the technology to extract lower concentrations of precious metals, and the continuing stable prices received for these metals, a number of projects have been identified, at or near previously mined areas in southeast Alaska, as economically feasible. As is explained in more detail below, the use of an impoundment was part of the technology basis for the BPT, BAT and NSPS requirements of subpart J. Since the issuance of the ore mining and dressing guidelines, a number of projects covered by subpart J have progressed through the permit process. A few of these projects have identified the use of impoundments as a potential problem, although without merit in EPA's view. However, the detailed site specific design information from the Alaska-Juneau (A–J) project recently has brought into question the appropriateness of the technology basis for the requirements of subpart J, as applied to the A–J site. The function of the impoundment as part of the technology basis and its application to the A–J project site are discussed below, along with the effect of today's proposal.

1. Application of Subpart J to A–J Project

The existing BPT, BAT, and NSPS requirements in Subpart J that are applicable to mines with froth-flotation mills are based on treatment technology consisting of impoundment, treatment of the impoundment (pond) water to precipitate metals and enhanced settling of particulate matter by pH adjustment, chemical flocculent treatment, if necessary, clarification and filtration of overflow pond water for recycle back to the mill. For BPT and BAT, the Agency determined that although many existing froth-flotation mills were practicing wastewater treatment and recycle, the cost to retrofit the remaining mills' treatment systems would be prohibitive. Thus, the technology basis for both BPT and BAT did not include total recycle, and BAT limitations were set equivalent to BPT for existing sources. For NSPS, the Agency determined that new sources could design a wastewater treatment and recycle system in conjunction with a tailings impoundment that would generally achieve no discharge of process wastewater. (NSPS includes exceptions that allow discharges under certain specified circumstances, as noted below.)

Tailings ponds have been used historically in the mining industry. Tailings are the waste rock remaining after the processing of the mineral-bearing (lode) ore. The lode ore is processed by crushing and grinding, and then separation and concentration. Remaining pulverized lode ore that is too poor in gold to be further processed and waste material resulting from the washing, concentration, or treatment of the ground ore are known as ''tailings.'' These are sent to the tailings pond, which serves as the disposal site for the solids (pulverized waste rock and other

precipitates) that settle out of the tailings wastestream when it is added to the pond. The impoundment is designed primarily for suspended solids removal and retention, so it must be large enough to provide sufficient retention time and quiescent conditions conducive to settling, including adequate volume to hold the settled solids. The tailings impoundment assumed by EPA in establishing the requirements of Subpart J is designed to permanently hold the mill tailings expected for the life of the mine while also containing precipitation that falls directly on the impoundment and the runoff resulting from a 10 year, 24 hour storm event. Additional impoundment volume may be necessary to promote the settling of solids to achieve allowable discharge limitations.

The location of a tailings impoundment is determined by evaluating the best site for gravity flow of tailings to an area for permanent disposal, for minimal inflow from runoff or stream flow, and for a stable dam. The mine project site (including the mill) is located in close proximity to the ore body to control costs in order to make the project economically viable. Most tailings impoundments are located within a few miles of the ore body. Information in the 1978 and 1982 records indicates that approximately six miles was the greatest distance between the tailings impoundment and the mill at existing mines that were studied.

Generally, even when siting a tailings pond in a narrow valley with severe slopes, a location can be found to allow diversion of stream flow around the tailings pond to prevent or minimize pollution potential. For example, the tailings impoundment can be placed adjacent to one wall of the valley. It may be necessary to reroute the stream by means of contouring or construction of open channels or conduits. Runoff can be prevented from entering the impoundment by constructing diversion ditches, flumes, and dikes upslope and along the sides of the impoundment.

Tailings can be characterized generally as a process wastewater with approximately 20–50 percent solids by weight. In arid or semi-arid areas, evaporation and seepage from the tailings pond may equal or exceed the input of the water fraction of the tailings wastestream (*i.e.*, the remaining 50–80 percent by weight liquid fraction). In all areas, even arid areas, the amount of runoff entering the tailings pond is minimized by diversion using a number of common management practices. However, in areas of net annual precipitation (*i.e.*, where the annual rainfall and snowfall amount exceeds the annual amount of evaporation), Subpart J allows excess pond water to be discharged based on a calculated amount of runoff for BPT, BAT, and NSPS, subject to specified effluent limitations. 40 CFR 440.102(c)(2); 440.103(c)(2); 40 CFR 104(b)(2)(i). The amount of runoff is determined by the difference in annual precipitation and evaporation rates times the amount of surface area of the pond that receives direct precipitation and the amount of ground surface area surrounding the pond that drains into it. For NSPS, EPA also included, in response to comments, an exemption from no discharge for an equivalent volume of fresh (makeup) water that mills could demonstrate is necessary due to a buildup of contaminants in the recycled pond water that significantly interferes with the ore recovery process. Such a discharge, which also is subject to specified limitations, is allowed only if the interference can not be eliminated through appropriate treatment of the recycle water. 40 CFR 440.104(b)(2)(ii). In addition, the volume of any excess runoff from a single storm or combined storm event exceeding the 10 year, 24 hour event design criteria of the pond also may be discharged. 40 CFR 440.131(b). Treatment of the excess pond water, in addition to its settling in the tailings impoundment, may be required using chemical flocculation either directly in the tailings pond or in subsequent treatment units to enhance solids settling and to precipitate and settle metal hydroxides in order to meet the current discharge limitations.

The intended function of the tailings impoundment (pond) that is part of the technology basis for BPT, BAT, and NSPS in Subpart J was critical to the establishment of all three sets of limitations. The ability to divert surface runoff and existing stream flow from entering the pond is most critical in high precipitation areas for the proper function of the tailings pond with respect to meeting the BPT, BAT, and NSPS requirements of Subpart J. Studies conducted by EPA in developing BPT, BAT, and NSPS evaluated a number of geographic locations where extreme topography and high rainfall were evident. Where topography and climatic extremes render any significant amount of diversion impractical, most or possibly all of the water within the watershed in which the impoundment is located will enter the impoundment and become contaminated by mine and mill wastewater, making subsequent treatment of the wastewater to meet recycle or discharge quality requirements more difficult.

The technology basis for the BPT and BAT discharge limitations and the NSPS no discharge requirement in subpart J included an ability for mills to divert significant amounts of natural stream flow and surface runoff around the tailings impoundment. In net precipitation areas, as well as net evaporation areas, EPA assumed or identified some degree of ability to divert runoff and/or stream flow in evaluating the design and construction of the tailings impoundments and their ability to meet the requirements of subpart J. In both the 1978 and the 1982 Development Documents supporting BPT, BAT, and NSPS, EPA discussed diversion or minimization of surface runoff at various sites, and considered the types of practices available for achieving it. EPA also considered the possibility that extreme topography could be an obstacle to achieving no discharge, but judged that the exemptions and provisions discussed above would provide the relief that would be necessary for a mill to operate under the no discharge requirement. See the 1982 Development Document, page 535.

Many of the mills that were evaluated during the development of NSPS for subpart J practiced recycle and achieved no discharge. However, most of these mills were located in net evaporation areas or water short areas, where all of the excess pond water that could not be recycled would evaporate or seep out of the pond. EPA did include mills located in net precipitation areas in its evaluation of the no discharge requirement. In these areas, rainfall could occur in such quantity and at a regular enough frequency that pond water in excess of that required for recycle cannot be evaporated or seeped at a high enough rate to meet a no discharge requirement. Thus, the discharge allowances previously discussed were incorporated into the NSPS.

2. Today's Proposal

In light of the importance of the ability to divert natural stream flow and runoff, specific information from the A–J gold mine project has called into question the appropriateness of applying the requirements of Subpart J to this project. The A–J project has been evaluated in an Environmental Impact Statement prepared by the Bureau of Land Management (BLM). In BLM's preferred alternative, the design of the tailings impoundment includes a dam extending the width of Sheep Creek Valley to a height of 345 feet. The impoundment would encompass 420 acres of the 540 acre valley. The large

volume of the impoundment was made necessary in part because of the extremely large volume of tailings generated (over 100 million tons) during the life of the project and by the inability to divert runoff and stream flow using the common practices discussed above. In the case of the A–J project, the technical review of the submitted project design determined that for those design options presented, all of the existing stream flow and runoff would enter the impoundment and preclude adequate treatment of the wastewater prior to discharge.

If the tailings impoundment were used at the Sheep Creek Valley site in a manner anticipated by the current Subpart J requirements, but without the benefit of diverting the natural stream-flow, significant amounts of runoff from rainfall events would enter the impoundment and by coming into direct contact with the actual mill process wastewater, be considered as ''process wastewater'' as defined at 40 CFR 401.11(q). As described previously, all or almost all of this runoff, entering the impoundment, would be allowed to be discharged under NSPS as part of the storm allowance provision, along with any contaminant build up and/or mine drainage wastewaters, provided that discharge meets the specified limitations. Because of the inability to divert water around the Sheep Creek Valley impoundment location, an exceptionally large volume of process wastewater would be generated, and would make treatment options contemplated by the current technology basis unable to meet the limits imposed by the allowances. These same considerations apply to BPT and BAT except for the fresh makeup water allowance described earlier.

EPA's Region 10 issued a report regarding the A–J project plan in December 1994 entitled, ''Alaska Juneau Gold Mine Project, Technical Assistance Report for the U.S. Army Corps of Engineers Alaska District'' (known as the ''TAR''). The TAR concluded that implementation of the plan to construct the tailings impoundment across the valley and discharge this amount of wastewater likely would not ensure compliance with NSPS and would cause widespread exceedances of state water quality standards. In addition, the TAR concluded that the tailings impoundment would remain a substantial risk even after closure of the mill because it would not be isolated from the existing stream flow, including all or almost all of the valley's precipitation runoff. This would require continued maintenance of the impoundment dam as an active retention structure for a large volume of water in an area of active seismic activity and avalanche hazards. As part of a supplemental environmental impact statement (SEIS) under the National Environmental Policy Act (NEPA), additional project design alternatives for the A–J project will be evaluated, including whether an alternative location for an impoundment is possible.

EPA has concluded from the technical information identified and discussed above that the requirements in Subpart J might not be appropriate for tailings from a new ore mill located in Sheep Creek Valley, as described in the A–J project EIS. Due to the substantial annual net precipitation along with extreme topography, the combination of which leads to an inability to divert natural stream flow and any significant volume of surface runoff around the tailings impoundment, treatment of the discharge to allowable concentration levels cannot be accomplished. In addition, the 1978 and 1982 final rules did not consider the long-term (post-closure) safety considerations, such as the long-term structural integrity of the impoundment dam, that result from the existence of a tailings pond that was not isolated from stream flow and runoff.

Thus, EPA is proposing to exempt dewatered tailings from the A–J project from the existing BPT, BAT, and NSPS requirements in 40 CFR part 440, subpart J (§ 440.102–104). EPA also is proposing to add a definition of ''dewatered tailings'' to 40 CFR part 440, Subpart L, specifying that ''dewatered tailings'' means that portion of a mill tailings slurry wastestream from which approximately 75 percent or more of the water fraction has been removed for recycling through the mill. This definition continues to rely on the recycle portion of the technology basis for the current rule following the separation of much of the solids which are contained as part of the tailings, for possible discharge using an alternative control technology. Mine drainage, process wastewater separated from the dewatered tailings, and other process wastewater discharges from the A–J project would continue to be covered by subpart J. NPDES permit requirements for discharges of dewatered tailings from the A–J project would be determined by EPA using best professional judgment in accordance with 40 CFR 125.3, utilizing the results of ongoing environmental review of the project under NEPA.

EPA's proposal to exempt dewatered tailings from the A–J project from the requirements of NSPS has some precedent. During development of the 1982 ore mining and dressing guidelines, the Agency received comments from developers of a molybdenum mine and mill in southeastern Alaska (Quartz Hill). The developers argued that the mill differed substantially from the existing molybdenum mills upon which the Agency based the proposed NSPS and that the alternative of submarine tailings disposal should not be precluded from consideration. Specifically, they argued that precipitation was greater at the Quartz Hill site than at other facilities and that the terrain was unusually steep, necessitating the construction of a dam much larger than tailings impoundments at existing facilities. They argued that since the mine and mill were located in the environmentally sensitive Misty Fjords National Monument, construction of a massive tailings impoundment may result in greater long term environmental degradation than at existing facilities. They also pointed out that the mine and mill were being developed in accordance with the dictates of the Alaska National Interest Lands Conservation Act (ANILCA), which requires an intensive study of the overall environmental impact of the mine and mill before construction begins. Finally, they noted that the mine and mill were in an earthquake area, and that construction of a large tailings dam raises concerns for safety of the population below the dam. The Agency disagreed with the commenter's assertions that the proposed molybdenum mine and mill differed significantly in topography and climate from existing mines and mills. However, given the possibility that compliance with the no discharge NSPS would result in substantial non-water quality environmental impacts, and given the fact that these impacts were being subjected to an intense environmental scrutiny, the Agency exempted the project from requirements of NSPS.

Today's proposal to exempt the A–J project from certain requirements of Subpart J opens the way for the detailed evaluation of alternatives for treatment of the tailings from the project that are not allowable under the current regulations. Some of these alternatives do not involve the use of Sheep Creek Valley as an impoundment site and might lessen the environmental impacts of the project. This portion of the preamble discusses technologies that involve the use of a smaller impoundment or no impoundment at all.

As part of the review of the original A–J project design submittal, the Bureau of Land Management (BLM) conducted

an environmental impact analysis reported in the document titled, ''A–J Gold Mine Project Final Environmental Impact Statement'' (BLM, 1992). The BLM analysis included evaluations of tailings disposal options other than the construction of the dam and impoundment in Sheep Creek Valley. These alternatives included refilling of the mine with dewatered tailings, disposal of dry tailings on land, and disposal of tailings at alternative disposal locations (*e.g.*, Powerline/Icy Gulch, Sheep Fork Carlson Creek, and Rhine Creek). Generally, these alternatives were rejected because of expected exceedances of water quality criteria or because of cost which would render the project uneconomical. Some of these alternatives may receive additional consideration as a result of the SEIS effort. For example, EPA concluded in the TAR that the Powerline/Icy Gulch disposal location should be re-evaluated because diversion of up to 80 percent of the surface runoff may be achievable. In addition, the discharge of tailings from the A–J project to marine waters (submarine tailings disposal), which otherwise would be prohibited by subpart J, could appropriately be evaluated as a result of today's proposal. The discharge of tailings to marine waters would require final revision of subpart J under today's proposal. A combination of the above disposal alternatives could also be considered.

Potential difficulties with the use of tailings impoundments in areas of extreme topography and climate were raised both during the development of the existing part 440 guidelines and standards and also during the permitting process for several mine and mill sites. However, except for the Quartz Hill site (which was undergoing a separate environmental review during the development of part 440 and was excluded from coverage by that Part), no other site that EPA has reviewed until now has exhibited such extreme topographic and climatic conditions that an exemption from certain Subpart J requirements, as proposed, might be warranted. Because much of southeastern Alaska consists of highly mountainous terrain characterized by glacially carved valleys with avalanche chutes and talus slopes, EPA solicits comment on whether other mine sites exhibit extreme environmental conditions such as those at the A–J project site, and would be estimated to have project characteristics such as extremely large volumes of tailings that would pose treatment and disposal problems under part 440.

As mentioned above, the A–J project site is the only current new source site reviewed by EPA that exhibits extreme topographic and climatic conditions which might justify an exemption from certain Subpart J requirements, as proposed. If additional sites are identified, a more general exemption provision might be appropriate, provided that adequate criteria can be established to identify project sites that would qualify for the exemption. EPA is considering the following possible alternative to an exemption that covers the A–J project only:

> (e) The provisions of this subpart shall not apply to discharges of dewatered tailings if a permit applicant demonstrates to the satisfaction of the permitting authority that due to high net precipitation and extreme topography (e.g., steep valley walls, avalanche hazards, or talus slopes), it would not be feasible to divert natural stream flow and runoff, rendering impractical the treatment and disposal of tailings in a tailings impoundment.

If a more general exemption provision is incorporated into the final rule based on comments and additional data on the characteristics of extreme sites, quantifiable criteria to identify qualifying sites might be included. EPA solicits comment on the type of criteria that could be included in such a provision. The amount of annual precipitation, slope of mountainous terrain, width of valley floor and location of avalanche chutes and/or seismically active (earthquake) areas are examples of quantifiable criteria that could be useful in establishing a more general exemption provision.

EPA might take final action with respect to today's proposed exemption covering only the A–J project site. Alternatively, based on the additional information, EPA might identify a feasible alternative for tailings treatment by the A–J project that would allow compliance with the existing regulations and obviate the need for any exemption from Subpart J as proposed. The Agency could also promulgate a more general exemption as described above, or take final action with respect to the A–J project site but proceed to collect further data on other project sites identified by commenters or on criteria for a more generally applicable exemption. Variations on these approaches are also possible. EPA will evaluate all comments and information received prior to making a final determination, which the Agency currently expects to do by the end of 1996.

3. Further Evaluation of A–J Project Proposal

Today's proposal does not in itself authorize or endorse any method of tailings treatment or disposal at the A–J site. As discussed previously, additional designs for the A–J project are expected to be evaluated under NEPA. These studies are conducted as part of the NPDES permitting process for new sources. Any permit issued would include discharge requirements based on applicable NSPS or effluent limitations guidelines, on best professional judgment (BPJ) where guidelines are not applicable, and on any applicable water quality standards. 40 CFR 122.49(g), 40 CFR 122.44(a) and 40 CFR 122.44(d).

In preparation for the development of the draft NPDES permit, scoping for the AJ project SEIS is scheduled to begin in February, 1996, with publication of a draft SEIS in late Spring of 1996. The SEIS will evaluate the impacts of the disposal of mine tailings in marine waters (approximately 300 feet deep) in Stephens Passage, several miles south of the city of Juneau. The tailings would be produced by processing finely ground ore via gravity separation and flotation using various reagents (no cyanide) to produce a concentrate that would be shipped elsewhere for refining. The tailings would be dewatered to allow for recycling of the process water in the milling process. The dewatered tailings, which may be remixed with sea water (for buoyancy control), would be piped to a discharge point in Stephens Passage.

In addition to disposal of dewatered tailings in deep marine waters, the SEIS will examine other potential tailings disposal sites. The SEIS will specifically examine whether there are any potential upland tailings impoundment sites where the diversion of surface runoff would be possible. A Final SEIS should be available by late 1996.

4. Conclusion and Request for Comments

EPA solicits comment and additional information on all aspects of today's proposal to amend the applicability of subpart J. In particular, the Agency seeks comment on whether an exemption for the A–J mine project from the requirements of Subpart J as proposed is warranted; and whether additional project sites exist which exhibit extreme topographic and climatic conditions that might warrant the exclusion of dewatered tailings from coverage under subpart J. Information also is requested on the types of criteria that could be used to establish a more

general exemption from the requirements of Subpart J in the event that additional sites are identified which exhibit extremely rugged terrain and high annual precipitation, leading to a similar inability to divert natural stream flow and stormwater runoff. EPA also solicits any information or data available on alternative tailings disposal technologies that could be used at the A–J site. Such technologies may include dewatered tailings discharge to deep marine waters, backfilling of the mine with dewatered tailings and disposal of dewatered tailings on land without an impoundment. Cleaned tailings might also be used as road building materials in asphalt or used as construction material in concrete block or brick. The cleaned tailings could be fixed and stabilized with concrete prior to either mine or off-site land disposal.

C. 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 affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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. Since this proposed rule is deregulatory in nature, the expected cost for implementation by the private sector is below $100 million. In addition, this proposal does not impose a mandate on any governmental entities since EPA is the permitting authority for this mine. As a result, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. For the same reason, EPA does not need to develop a plan for consultation of affected governmental entities pursuant to Section 204 of UMRA and Executive Order 12875.

During the preparation of this proposed rule, the Agency held consultations with State and local governments, industry, and public interest group representatives.

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 OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities,or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is not a ''significant regulatory action'' because the rule is a deregulatory action and has the potential to create jobs while continuing to protect the environment.

E. Paperwork Reduction Act

This proposed rule contains no information collection activities. Therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 440

Environmental protection, Gold ore mining and dressing industry, Wastewater treatment, Waste treatment and disposal, Submarine tailings disposal, Metals, Water pollution control.

Dated: February 2, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, part 440 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 440—[AMENDED]

1. The authority citation for part 440 continues to read as follows:

Authority: Secs. 301, 304(b), (c) and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), (the Act), 33 U.S.C. 1311, 1314(b), (c) and (e), 1316, 1317, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4.

2. Section 440.100 is amended by adding paragraph (e) to read as follows:

§ 440.100 Applicability; description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

* * * * *

(e) The provisions of this subpart shall not apply to discharges of dewatered tailings from the Alaska-Juneau mine and mill near Juneau, Alaska.

3. Section 440.132 is amended by adding paragraph (k) to read as follows:

§ 440.132 General definitions.

* * * * *

(k) *Dewatered tailings* means that portion of a mill tailings slurry wastestream from which approximately 75 percent or more of the water fraction has been removed for recycling through the mill.

[FR Doc. 96–2917 Filed 2–9–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 6]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee on Regulatory Negotiation Public Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Schedule of Advisory Committee meetings.

SUMMARY: This document announces a change in the time and location of the next series of meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Monday-Wednesday, March 4–6, 1996; Tuesday-Thursday, April 23–25, 1996.

ADDRESSES: The March and April 1996 meetings will be held at the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. Meetings will begin at 9:00 a.m., except for the meeting of Monday, March 4, 1996, which will begin at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator*: Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: On December 21, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final schedule for its 1996 meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) (60 FR 66247). The document announced that the meetings for March 4–6, 1996, would begin at 9:00 a.m., and be held at NHTSA headquarters. However, at its January meetings, the Committee decided that the meetings for March 4–6, 1996, would be held at the Offices of the Federal Mediation and Conciliation Service, as stated above, and that the meeting scheduled for Monday, March 4, 1996, would commence at 10:00 a.m.

The meetings are open to the public.

Issued: February 6, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2996 Filed 2–9–96; 8:45 am]
BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 29
Monday, February 12, 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

Agricultural Marketing Service

[TM–96–00–100]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to a currently approved information collection in support of the International Carriage of Perishable Foodstuffs (ATP) program based on reestimates reflecting actual use of the program over the last 9 years.

DATES: Comments on this notice must be received on or before April 12, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Brian M. McGregor, Agricultural Marketing Specialist, U.S. Department of Agriculture (USDA), AMS, Transportation and Marketing Division (TMD), Shipper and Exporter Assistance Program, Room 1217 South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 690–1319, Fax (202) 690–1340.

SUPPLEMENTARY INFORMATION:

Title: International Carriage of Perishable Foodstuffs.

OMB Number: 0581–0165.

Expiration Date of Approval: March 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Customers in Europe who want to purchase U.S.-manufactured refrigerated trailers require the trailers be certified in accordance with the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP). The United States acceded to this treaty in fiscal year 1983.

With respect to U.S. treaty obligations and under the authority of the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406) and the regulations (7 CFR 3300), the USDA certifies, upon request from U.S. manufacturers and their European customers, that U.S.-built refrigerated trailers are properly insulated and capable of maintaining prescribed temperatures for the carriage of frozen food and chilled meat, poultry, fish, seafood, and dairy products.

The information collected on the Office of Transportation (OT) forms OT–8 through OT–15 are based on forms in the International Carriage of Perishable Foodstuffs agreement and is the minimum information necessary for USDA to properly certify refrigerated trailers in accordance with U.S. treaty obligations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15.2 hours per response.

Respondents: U.S. refrigerated trailer manufacturers and testing stations.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1.25 response per year.

Estimated Total Annual Burden on Respondents: 76 hours.

Copies of this information collection can be obtained from Brian M. McGregor, Agricultural Marketing Specialist, at (202) 690–1319.

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 will have practical utility; (b) the information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments to Brian M. McGregor, Agricultural Marketing Specialist, USDA, AMS, TMD, Shipper and Exporter Assistance Program, Room 1217 South Building, P. O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 690–1319, Fax (202) 690–1340.

All comments received will be available for public inspection during regular business hours in Room 1217.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 5, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–2947 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–02–P

[TM–96–00–200]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for fiscal year 1996 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for fiscal year 1996. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry organizations in the development of proposals and the conduct of projects.

DATES: Applications will be accepted through June 1, 1996.

ADDRESSES: Proposals may be sent to Dr. Larry V. Summers, FSMIP, Staff Officer, Transportation and Marketing Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 2949 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Larry V. Summers, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7

U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture in conducting studies or developing innovative approaches related to the marketing of agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Mutually acceptable proposals must be submitted through the State Agency and be accompanied by a completed Standard Form 424 and detailed budget statement. FSMIP funds may not be used for advertising or, with limited exceptions, for the purchase of equipment or facilities. Guidelines may be obtained from your State Department of Agriculture or the above AMS contact.

States are encouraged to submit proposals aimed at:

(1) Identifying and evaluating new uses, markets, and marketing systems for agricultural products, both domestically and internationally;

(2) Improving the efficiency of marketing processes and systems, including direct marketing, to enhance competitiveness and profitability;

(3) Improving or maintaining the quality and marketability of agricultural products through new handling, processing, and distribution techniques; and,

(4) Assessing opportunities for alternative crops, direct marketing, and farmers' markets to enhance income and market access for small or limited resource farmers.

Proposals addressing other marketing objectives or issues also will receive consideration.

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: February 5, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–2948 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–02–P

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, this notice announces the Farm Service Agency's intention to request an extension for and revision to a currently approved information collection in support of Eminent Domain Acquisitions.

DATE: Comments on this notice must be received on or before April 12, 1996, to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Earline J. Brown, Agricultural Program Specialist, Compliance and Production Adjustment Division, USDA, FSA, P.O. Box 2415, Washington, DC 20013, (202) 690–4501.

SUPPLEMENTARY INFORMATION:

Title: Eminent Domain Acquisitions: Reallocating Allotments, Quotas, and Bases.

OMB Number: 0560–0033.

Expiration of Approval Date: February 29, 1996.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Agricultural Adjustment Act of 1938, as amended, sections 377 and 378, pages 12–6 through 12–8 of the Compilation of Statutes, provides for pooling and transferring of allotments for any commodity for any land from which the owner is displaced because of acquisition of the land by any Federal, State or local agency having the power of eminent domain. An acquisition, with respect to land, is a taking, under the power of eminent domain by a Federal, State, or other agency of: title to land, an impoundment easement on land, or a flowage easement on land. An owner is considered displaced from a farm acquired under the eminent domain power exercised by the Federal, State, or local agency.

The eminent domain pool is a reverse of allotments, quotas, bases, and irrigated acreage maximum (IAM's) for the base years, held for displaced owners for transfer to other farms they own or purchase. The information is manually recorded on ASCS–177 (Record of Pooled Farm Allotment, Quota or CAB and IAM) and ASCS–178 (Application for Transfer of Allotment, Quota or CAB and IAM from Pool), by county office employees from county office records and from information obtained from the displaced owner. The information is used when transferring the allotment, quota, base, or IAM's at the displaced owner's request, to other land owned or acquired by the displaced owner within 3 years of the date of the owner's displacement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one-half hour per response.

Respondents: These collections are used by farms and not small businesses.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 3,000 hours.

Comments regarding (a) whether the proposed collection of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Earline J. Brown, Agricultural Program Specialist, Compliance and Production Adjustment Division, Farm Service Agency, USDA, P.O. Box 2415, Washington, DC 20013–2415; telephone (202) 690–4501. Copies of the information collection may be obtained from Earline J. Brown at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on February 5, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–2928 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–05–M

Food and Consumer Service

Information Collection Requirements Submitted for Public Comment and Recommendations: Form FCS–143, Claim for Reimbursement (Summer Food Service Program)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS), is publishing for public comment a summary of a proposed information collection.

DATES: Comments on this notice must be received by April 12, 1996 to be assured of consideration.

ADDRESSES: Send comments to: Frank Duesing, Accounting Division, Financial Management, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 415, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Frank Duesing, (703) 305–2870.

SUPPLEMENTARY INFORMATION:

Title: Form FCS–143, Claim for Reimbursement (Summer Food Service Program).

OMB Number: 0584–0041.

Expiration Date of Approval: May 31, 1996.

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Abstract: The Summer Food Service Program Claim for Reimbursement Form is used to collect meal and cost data from sponsors in order to determine the reimbursement entitlement for meals served. The form is sent to the Food and Consumer Service's Regional Offices where it is entered into a computerized payment system. The payment system computes earnings to date and the number of meals served to date and generates payments for the amount of earnings in excess of prior advance and claim payments. If the information was not provided on the claim form, the sponsor would not have a vehicle for receiving reimbursement. Earned reimbursement in the Summer Food Service Program is based on performance, i.e., meals served. Recipients are reimbursed the lesser of meals served times rates or actual costs. To fulfill the earned reimbursement requirements set forth in the Summer Food Service Program Regulations issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on the FCS–143 claim form. In addition, this form is an intrinsic part of the accounting system being used currently to ensure reimbursement as well as to facilitate adequate record keeping.

This request is being made to extend the current information collection for an additional three years. Current methods are the only practical means of collecting this information considering the resources of form users.

The information collected is used by FCS to manage, plan, evaluate, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are Summer Food Program sponsors.

Estimated Number of Respondents: 731.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 1,100 hours.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: January 26, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–3032 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–30–U

Food Distribution Program: Substitution of Donated Chicken with Commercial Chicken

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Consumer Service's (FCS) intent to conduct a demonstration project to study the effects of allowing the substitution of donated chicken with commercial chicken in the State processing of donated chicken supplied by the Department of Agriculture (the Department). Under the demonstration project, FCS is invoking, in a final rule published elsewhere in this issue of the Federal Register, its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) of the substitution of poultry and will establish the criteria under which substitution will be permitted. Only bulk pack chicken and chicken parts will be eligible for substitution. The Department will use the demonstration project results to examine whether permitting this type of substitution will result in increased processor participation and provide a greater variety of processed chicken end products to recipient agencies in a more timely manner at lower costs.

DATES: The proposals described in this Notice may be submitted to FCS through June 30, 1997.

ADDRESSES: Proposals should be sent to Ellen Henigan, Chief, Schools/Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 501, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: Ursula Key, Schools/Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FCS to waive any of the requirements contained in 7 CFR Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at § 250.30(f)(1)(i) currently allow for the substitution of certain specified donated food items, with the exception of meat and poultry. Under the current regulations at § 250.30(g), when donated meat or poultry products are processed

or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing is required to be performed in plants under continuous Federal meat or poultry inspection or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Currently, only a few poultry processors are participating in the State processing of donated foods. Processors have stated that the current policy which prohibits the substitution of donated chicken reduces the quantity of donated chicken they are able to accept and process during a given period. Chicken purchased by USDA for further processing is bulk chill packed. Processors must schedule production around deliveries of the donated chicken since it is a very highly perishable product. Some of the processors must schedule production around deliveries of donated chicken for up to 30 individual States. Vendors do not always deliver donated chicken to the processors as scheduled, causing delays in production of end products. These delays may be eliminated if the processors can substitute commercial chicken for donated chicken.

Demonstration Project

From February 1, 1996 to June 30, 1997, the Department will operate a demonstration project under which it will permit selected poultry processors to substitute commercial chicken for donated chicken in the State processing of donated chicken. Processors may submit proposals and be selected to participate in the demonstration project during this time. FCS is invoking, in a final rule published elsewhere in this issue of the Federal Register, its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) of the substitution of poultry for purposes of this demonstration project.

The demonstration project has been limited to bulk pack chicken and chicken parts only because such chicken lends itself readily to such a study. There are a number of reasons that this chicken is better than meat for purposes of this demonstration project. The definition of substitution in § 250.3 requires any replacement of commercial product for donated food to be of the same generic identity and equal or better quality. With bulk pack chicken and chicken parts, these requirements can be met easily and quickly, but requirements for the substitution of meat would be more complicated. For example, the USDA specification for donated ground beef calls for quality assurance provisions and certification requirements such as: (1) Checking fresh chilled beef for condition prior to grinding; (2) a sampling program to determine if physchrotropic plate count levels exceed 100,000 bacteria per gram; (3) assuring removal of bone and trimming defects; (4) compliance with time and temperature requirements during processing and storing; and (5) compliance with fat content requirements. These requirements cannot be duplicated by many processors. Additionally, donated ground beef is delivered frozen for processing, so the need for quickly turning around the product is not as crucial as it is for bulk chilled chicken. On the other hand, the USDA specifications for donated bulk pack chicken and chicken parts are more easily met. Bulk pack turkey and turkey parts may be considered for inclusion in future demonstration projects since graders can easily determine if commercial turkey meets or exceeds the specifications for donated turkey.

FCS is soliciting interested poultry processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated chicken into end products, Agricultural Marketing Service (AMS) graders must monitor the processing of any substituted commercial chicken to ensure program integrity is maintained.
- Only bulk pack chicken and chicken parts delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen chicken parts delivered to schools which may be turned over to processors for further processing at a later time.)
- Commercial chicken substituted for donated chicken must be certified by an AMS grader as complying with all product specifications for the donated chicken.
- Substitution of commercial chicken may occur in advance of the actual receipt of the donated chicken by the processor. However, no substitution may occur before the notice to deliver for that processor is issued by USDA. Lead time between the purchase and delivery of donated chicken may be up to five weeks. Any variation between the amount of commercial chicken substituted and the amount of donated chicken received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated chicken not used in end products because of substitution must only be used by the processor in other commercial processed products and cannot be sold as an intact unit.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of chicken (§ 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The demonstration project will enable FCS to evaluate whether to amend program regulations to provide for the substitution of donated chicken with commercial chicken in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would probably increase the number of processors participating, and whether it would probably increase the quantity of donated chicken that each processor accepts for processing. Further, FCS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated chicken accepted for processing in fact enable processors to function more efficiently, producing a greater variety of processed chicken end products in a more timely manner at lower costs.

Interested processors should submit a written proposal to FCS outlining how they plan to carry out the substitution while complying with the above conditions. The proposal must contain a step-by-step description of how production will be monitored and a complete description of the records that will be maintained for the commercial chicken substituted for the donated chicken as well as the disposition of the donated chicken delivered. All proposals will be reviewed by representatives of the Food Distribution Division of FCS and by representatives of AMS's Poultry Division's Commodity Procurement Branch and Grading Branch. Those companies selected for participation in the demonstration project will be required to enter into an agreement with FCS and AMS which authorizes the processor to substitute commercial bulk pack chicken or chicken parts in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration

project will not ensure the processor will receive any State processing contracts.

Dated: January 18, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–2178 Filed 2–9–96; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 788]

Grant of Authority; Establishment of a Foreign-Trade Zone; Anniston, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Anniston Metropolitan Airport Board of Commissioners (formerly the Anniston-Calhoun County Airport Commission), on behalf of the City of Anniston, Alabama (the Grantee), has made application to the Board (FTZ Docket 32–94, 59 FR 54432, 10/31/94), requesting the establishment of a foreign-trade zone in Anniston, Alabama, adjacent to the Birmingham Customs port of entry; and,

Whereas, notice inviting public comment has been given in the Federal Register and the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 211, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of January 1996.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–3069 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the second antidumping duty administrative review of dynamic random access memory semiconducts (DRAMS) from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States and the period May 1, 1994 through April 30, 1995.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0651 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until June 29, 1996. We will issue our final results for this review by December 27, 1996.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: February 2, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–3064 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of Antidumping Duty Administrative Review.

SUMMARY: On August 17, 1995, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the Republic of Korea (60 FR 42835). Clerical errors which were timely filed by the parties were not corrected by the Department prior to the time the parties filed suit with the Court of International Trade (CIT). Therefore, leave was requested to correct the clerical errors in this case. Pursuant to orders issued by the CIT on November 16, 1995, and November 27, 1995, granting leave to the Department to correct ministerial errors, we have corrected several ministerial errors with respect to sales of subject merchandise by four Korean manufacturers/exporters. The errors were present in our final results of review. The review covers the period November 30, 1990, through May 31, 1992. We are publishing this amendment to the final results of review in accordance with 19 C.F.R. 353.28(c) and the orders issued by the CIT.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0651/3814.

SUPPLEMENTARY INFORMATION:

Background

The review covers four manufacturers/exporters of polyethylene terephthalate (PET) film from the Republic of Korea (Korea): Cheil Synthetics, Inc. (Cheil), SKC Limited (SKC), Kolon Industries, Inc. (Kolon), and STC Corporation (STC), and the period November 30, 1990 through May 31, 1992. The Department published the preliminary results of review on July 8, 1994 (59 FR 35098), and the final results of review on August 17, 1995 (60 FR 42835).

Clerical errors which were timely filed by the parties were not corrected by the Department prior to the time the parties filed suit with the CIT. Therefore, leave was requested to correct the clerical errors in this case. On November 16, 1995, and November 27, 1995, the CIT issued orders granting leave to the Department to correct ministerial errors in these final results.

Applicable Statute and Regulations

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

Scope of Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

For most of the respondents the period of review (POR) covers November 30, 1990 through May 31, 1992. Because Cheil was determined to have a *de minimis* margin in the *Preliminary Determination of Sales at Less Than Fair Value* (56 FR 16305) (LTFV), Cheil's POR begins on April 22, 1991, when suspension of its merchandise was first ordered, and runs through May 31, 1992.

Ministerial Errors in Final Results of Review

The CIT granted leave to the Department to correct ministerial errors. The Department determined that it made the following clerical errors in the final results:

All Respondents

In the final calculations, the Department's cost of production (COP) test for all respondents inadvertently retained products sold below the COP in less than three months. We corrected the COP test calculations for all respondents by revising the COP test to exclude those products from our dumping analysis which were sold in less than three months during the period of review (POR) and were also sold below COP for those months (i.e., a product sold in two months would be excluded from analysis if that product was sold below COP for two months).

Cheil

In our final calculations we inadvertently failed to add Cheil's duty drawback for local export sales (a type of home market sale) to Cheil's net home market price before conducting the COP test. We corrected this clerical error by adding duty drawback to Cheil's net home market price before conducting the COP test.

In our final calculations we inadvertently included packing and imputed credit expenses twice in the calculation of constructed value (CV). We corrected this by re-writing the CV program to include these expenses only once.

Our final calculations contained a typographical error in the product code variable in the difference-in-merchandise section. We corrected this error by re-writing this section of the calculations with the correct product code variable.

SKC

The final calculations contained a typographical error in the variable name for two models of PET film in SKC's model-matching section. We corrected this error by inserting the correct variable name for these two models of PET film.

In our final calculations, we inadvertently re-calculated SKC's imputed U.S. credit expense using date of sale for unpaid sales to Anacomp instead of the date of payment. We corrected this error by re-calculating SKC's U.S. credit expense using the date of payment.

Our final results calculations failed to use the proper data set containing SKC's further-processed sales in the United States in calculating SKC's exporter's sales price (ESP) transactions. We corrected this error by using the proper data set for SKC's ESP calculations. In our final calculations we incorrectly computed profit attributable to further-processed sales by inadvertently deducting SKC's U.S. movement expenses twice from this calculation. We corrected this error by re-writing the further-processed sales program to deduct these expenses only once.

Kolon

In the final calculations for Kolon we re-calculated Kolon's U.S. inland insurance expense based upon revised data gathered at verification. These calculations contained a typographical error. We corrected the typographical error in the final calculations of Kolon's U.S. inland insurance expense.

STC

For our final calculations we inadvertently re-calculated STC's home market credit expense based upon a shorter payment period than its actual payment period. We corrected our final calculations by computing STC's home market credit expense based upon the actual payment period.

Amended Final Results of Review

Upon correction of the ministerial errors listed above, the Department has determined that the following margins exist for the periods indicated:

Manufacturer/exporter	Percent margin
November 30, 1990 through May 31, 1992:	
SKC Limited	0.11
Kolon Industries	0.60
STC Corporation	11.41
April 22, 1991 through May 31, 1992:	
Cheil Synthetics	0.07

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be the rates outlined above, except for Cheil and SKC, which, because their weighted-average margins were de minimis, will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in 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 or any previous review conducted by the Department in the LTFV investigation, the cash deposit rate will be 4.82%, the all others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: Janaury 31,1 996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–3065 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–538–802]

Shop Towels From Bangladesh; 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 September 21, 1995, the Department of Commerce (the Department) issued the preliminary results of its 1993–1994 administrative review of the antidumping duty order on shop towels from Bangladesh (60 FR 48970; September 21, 1995). The review covers six manufacturers/exporters. The review period is March 1, 1993, through February 28, 1994. We gave interested parties an opportunity to comment on our preliminary results. No comments were received. Therefore, the final results are the same as the preliminary results.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1995, the Department published in the Federal Register the preliminary results of its 1993–1994 administrative review of the antidumping duty order on shop towels from Bangladesh (60 FR 48970).

Applicable Statute and Regulations

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

Scope of Review

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the *Harmonized Tariff Schedules* (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Therefore, we determine that the following percentage weighted-average margins exist for the period March 1, 1993, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Eagle Star Mills Ltd	[1] 42.31
Greyfab (Bangladesh) Ltd	0.00
Hashem International	0.00
Khaled Textile Mills Ltd	9.61
Shabnam Textiles	1.74
Sonar Cotton Mills (Bangladesh) Ltd	42.31

[1] No shipments or sales subject to this review; rate is from LTFV investigation.

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 on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established above (except that if the rate for a firm is *de minimis, i.e.,* less than 0.5 percent, a cash deposit of zero will be required for that firm); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 or any previous review or the original investigation, the cash deposit rate will be 4.60 percent, the ''All Others'' rate established in the LTFV investigation (57 FR 3996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as a reminder to parties subject to administrative

protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: February 1, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–3066 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–401–401]

Certain Carbon Steel Products From Sweden; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On August 24, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain carbon steel products from Sweden for the period January 1, 1993 through December 31, 1993. We have completed this review and determine the net subsidy to be 2.98 percent *ad valorem* for all companies. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Gayle Longest, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2849; (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1995, Department published in the Federal Register (60 FR 44014) the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On September 25, 1995, a case brief was submitted on behalf of U.S. Steel Group, a unit of USX Corporation, petitioner. On October 2, 1995, rebuttal comments were submitted by SSAB Svenskt Stal AB (SSAB), respondent.

The review covers the period January 1, 1993 through December 31, 1993. The review involves one company, SSAB, the sole known producer/exporter of the subject merchandise during the review period, and nine programs.

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. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by this review are shipments of certain carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated or crimped; whether or not corrugated or crimped: whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item number 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000.

The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Because SSAB is the only manufacturer/exporter of the subject merchandise to the United States, SSAB's net subsidy rate is also the country-wide rate.

Privatization

SSAB was partially privatized twice, in 1987 and in 1989. In the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* (58 FR 37385; July 9, 1993) (*Final Determination*), the Department found that SSAB had received countervailable subsidies prior to these partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (*see* the General Issues Appendix appended to the *Final Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, at 37262; July 9, 1993) (*General Issues Appendix*)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate the subsidies remaining with SSAB after each partial privatization, we performed the following calculations. We first calculated the net present value (NPV) of the future benefit stream of the subsidies at the time of the sale of the shares. We then multiplied the NPV by the percentage of shares the government retained after the sale and derived the amount of subsidies not affected by privatization. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the ''Privatization'' section of the *General Issues Appendix* (58 FR at 37259). This amount was then subtracted from the NPV, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB after each partial privatization.

With respect to sale of ''productive units'' by SSAB, we have followed the

same methodology used in the *Final Determination* (58 FR 37385). In accordance with that methodology, a portion of the price paid when a productive unit is sold is allocable to the repayment of subsidies received in prior years by the seller of the productive unit. The subsidies allocated to the POR have been reduced for all of the programs, as described above. These subsidies were further adjusted by the asset value of the productive unit. For a further explanation of the Department's methodology regarding ''sales of productive units'' and these calculations, see the ''Restructuring'' section of the *General Issues Appendix* (58 FR at 37265).

To calculate the benefit provided to SSAB, we multiplied the benefit calculated for 1993, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after the partial privatization. We then divided the results by the company's total sales in 1993.

Analysis of Programs

Based upon our analysis of the questionnaire responses, verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

1. *Equity Infusion*

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 0.82 percent *ad valorem*.

2. *Structural Loans*

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 0.38 percent *ad valorem*.

3. *Forgiven Reconstruction Loans*

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 1.77 percent *ad valorem*.

4. *Grants for Temporary Employment for Public Works*

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings that the net subsidy for this program is 0.01 percent *ad valorem*.

II. Program Found Not To Confer Subsidies

In the preliminary results we found the Research & Development (R&D) Loans and Grants program did not confer countervailable benefits during this period of review. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

III. Programs Found Not To Be Used

In the preliminary results we found the following programs to be not used:

1. Regional Development Grants
2. Transportation Grants
3. Location-of-Industry Loans

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

IV. Program Found To Be Terminated

In the preliminary results we found the State Stockpiling Subsidies program to be terminated. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

Analysis of Comments

Comment 1: Petitioner argues that the Department's privatization methodology is contrary to economic reality and the requirements of the countervailing duty law. According to petitioner, the Department's determination that privatization ''repays'' a portion of the subsidies received before privatization is contrary to economic reality because the resources provided by the government to SSAB, which the market would not have provided, still remain with SSAB after privatization and continue to benefit the production of the merchandise. No resources were transferred from SSAB to the Government of Sweden (GOS). Furthermore, they contend that the Department's privatization methodology is contrary to the countervailing duty law because the countervailing duty statute, 19 U.S.C. § 1671(a), requires that subsidies bestowed upon the production, manufacture, or exportation of merchandise imported into the United States be countervailed. Since the subsidies received by SSAB continue to benefit its production of the subject merchandise after the partial privatizations, these subsidies continue to be fully countervailable.

The respondent argues in rebuttal that the new shareholders' arm's length purchases result in the repayment of prior subsidies as a matter of economic reality and as a result of the functional identity between a company and its shareholders in the context of privatization.

Department's Position: We disagree with petitioner. The Department previously addressed this issue in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* (58 FR 37385, July 9, 1993) (*Final Determination*) and in the General Issues Appendix appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37261–2, July 9, 1993) (*General Issues Appendix*). In this proceeding, petitioner has not submitted any new arguments which would warrant reconsideration of this issue.

Comment 2: Petitioner argues that the Department's privatization methodology is flawed and not supported by facts. Petitioner contends that the basis of the Department's methodology is that purchasers of shares in a subsidized company paid more for those shares than they would otherwise have absent subsidization; that because the new owners are presumably profit-maximizers, the privatized firm must now generate a reasonable rate of return on the owner's investment; and that to the extent that the new owners invested more in the company because of the subsidies, the company presumably faces an obligation to generate more earnings so as to provide a reasonable rate of return. Petitioner argues that this premise is incorrect, and that the Department is confusing countervailable subsidy benefits with the effects of subsidies on the value of the company. Petitioner also argues that the Department's repayment methodology assumes that private investors have different expectations than government investors, however the Department offers no evidence to support this assumption. Finally, petitioner argues that if the repayment methodology applies to purchases of shares in state-owned companies, it must also apply to purchases of shares in private companies that have received subsidies.

Department's Position: The arguments presented by the petitioner have been previously addressed by the

Department. *See General Issues Appendix* (58 FR 37217, at 37259, 37264). In this proceeding petitioner has presented no new evidence or arguments regarding this issue that would warrant reconsideration of the Department's determination that past subsidies bestowed upon SSAB are affected by privatization. Thus, the Department's preliminary results remain unchanged with respect to this issue.

We note, however, that petitioner went beyond the Department's position in outlining their interpretation of the basis of the Department's methodology by stating that ''purchasers of shares in a subsidized company paid more for those shares than they would have, and that to the extent that the new owners invested more in the company because of the subsidies, the company presumably faces an obligation to generate more earnings to provide a reasonable rate of return.'' The Department neither stated nor implied such a position. The Department has stated that the owner-shareholders' expectations of a return on their investment cannot be separated from the profitability of the newly privatized company, and that the owners will seek to extract a rate of return from their company at least equal to that of alternative investments of similar risk. The Department also stated that to the extent that a portion of the price paid for a privatized company can reasonably be attributed to prior subsidies, that portion of those subsidies will be extinguished. *See General Issues Appendix* (58 FR 37217, at 37262).

Comment 3: Petitioner contends that the Department's privatization methodology was rejected by the Court of International Trade (CIT) in *British Steel plc* v. *United States, British Steel plc* v. *U.S.*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*). Petitioner contends that in *British Steel,* the court stated that it would seem at best that the only way to extinguish a previously given gift or subsidy would be to repay the gift or subsidy to the original donor government. To the extent that the sale of shares involves only a change in the beneficial ownership of the company, it does not cause any change in the company itself and no such repayment occurs.

Petitioner also contends that although the CIT's statements in *British Steel* regarding repayment are dicta, in the final remand determinations in *British Steel,* the Department accepted the CIT's reasoning and abandoned its repayment methodology. Therefore, the petitioner argues that because SSAB has not repaid the GOS for prior subsidies, such benefits remain with the company, and are countervailable.

Respondent contends that because the CIT has yet to issue its final judgment in *British Steel,* it is inappropriate to even suggest that the CIT's opinion has any bearing on this case.

Department's Position: We disagree with petitioner. The CIT has not entered an order with respect to the remand determinations in *British Steel.* The Department is not required to follow a CIT opinion that is still subject to litigation and to which the Department has not acquiesced. In such instances, the Department does not change its methodology while litigation is pending. *See, Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review.* (59 FR 13700, at 13702; March 23, 1994). Therefore, we have followed our privatization methodology as set forth in the *Final Determination.*

Comment 4: Petitioner argues that the Department has failed to explain the logic underlying its privatization methodology. Specifically, petitioner argues that the Department has failed to explain why a ratio of the subsidies received by a company each year to the company's net worth in that year serves as a ''reasonable surrogate'' for the percentage of the company's net value that the subsidies represent, and how a simple arithmetic average of these ratios relates to the value of the subsidies at the time the company is sold, much less to the extinguishment of subsidy benefits.

Respondent argues that the Department has substantial discretion and wide latitude in developing reasonable methodologies to properly implement the countervailing duty law. As a factual matter, the Department has adequately explained the bases for its repayment formula in the *General Issues Appendix.*

Department's Position: As explained in the *General Issues Appendix,* the methodology applied by the Department attempts to estimate the proportion of the purchase price attributable to subsidies. The ratio, cited by petitioner, represents, in the Department's view, the most reasonable approach to that estimation. In arguing the issue of the impact of privatization upon formerly government-owned companies which previously benefitted from subsidies, petitioners in the *Final Determination* stated that privatization does not affect the amount of subsidies allocable to the privatized steel companies, while respondents argued that privatization of a government-owned company extinguishes any pre-existing subsidies. The Department considered, but ultimately rejected, both of these extreme positions. The Department determined that prior subsidies are allocable to the privatized companies upon their sale to private parties. However, it also concluded that a portion of the price paid by the private parties constituted repayment for the subsidies previously bestowed on the formerly government-owned companies.

The Department recognized that any methodology developed to determine what portion of the sales price constituted repayment for prior subsidies would yield only a rough estimate.

In attempting to estimate that portion of the purchase price attributable to prior subsidies, the Department concluded that the most reasonable approach was to look at the ratio of the privatized company's subsidies (over time) to the company's net worth during the period from 1977 (the earliest point at which subsidies providing countervailable benefits in the period of investigation could have been bestowed) until the year before privatization. The subsidy-to-net worth ratio is intended to provide the Department with an estimate of the contribution subsidies have made to the value of a company.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be 2.98 percent *ad valorem* for all companies.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate
SSAB Svenskt Stal AB	2.98
Country-wide rate	2.98

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 2.98 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Sweden, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

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)) and 19 CFR 355.22.

Dated: January 30, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–3067 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–401–804]

Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On August 24, 1995, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden for the period December 7, 1992 through December 31, 1993. We have completed this review and determine the net subsidy to be 2.98 percent *ad valorem* for all companies for the periods December 7, 1992 through April 5, 1993, and August 17, 1993 through December 31, 1993. Merchandise entered on or after April 6, 1993 and before August 17, 1993 is to be liquidated without regard to countervailing duties.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Gayle Longest, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2849; (202) 482–3338.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 24, 1995, the Department published in the Federal Register (60 FR 44017) the preliminary results of its administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On September 25, 1995, a case brief was submitted on behalf of Bethlehem Steel Corporation, Geneva Steel, Gulf States Steel Inc. of Alabama, Inland Steel Industries, Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group, a unit of USX Corporation (petitioners). On October 2, 1995, rebuttal comments were submitted by SSAB Svenskt Stal AB (SSAB) (respondent).

The review covers the period December 7, 1992 through December 31, 1993. The review involves one company, SSAB, the sole known producer/exporter of the subject merchandise during the review period, and ten programs.

Because the period of review (POR) covers only three weeks in 1992 (December 7 through December 31, 1992), the Department determined that it was appropriate to apply the assessment rate calculated for 1993 to exports made during the three-week period. *See, Memorandum for Joseph A. Spetrini from the Steel Team* dated October 3, 1994, regarding calculation of the assessment rate in the first administrative reviews of the Certain Steel Countervailing Duty Orders, which is on file in the Central Records Unit, Room B–099 of the Department of Commerce.

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. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by this review are shipments of certain cut-to-length carbon steel plate from Sweden. 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 or in a closed box pass, or a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 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, or 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. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.000, 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 in this order are flat-rolled products of non-rectangular cross-section where 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 from this order is grade X–70 plate. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

Because SSAB is the only manufacturer/exporter of the subject merchandise to the United States, SSAB's net subsidy rate is also the country-wide rate.

Privatization

SSAB was partially privatized twice, in 1987 and in 1989. In the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* (58 FR 37385; July 9, 1993) (*Final Determination*), the

Department found that SSAB had received countervailable subsidies prior to these partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (see the General Issues Appendix appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, at 37262; July 9, 1993) (*General Issues Appendix*)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate the subsidies remaining with SSAB after each partial privatization, we performed the following calculations. We first calculated the net present value (NPV) of the future benefit stream of the subsidies at the time of the sale of the shares. We then multiplied the NPV by the percentage of shares the government retained after the sale and derived the amount of subsidies not affected by privatization. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the ''Privatization'' section of the *General Issues Appendix* (58 FR at 37259). This amount was then subtracted from the NPV, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB after each partial privatization.

With respect to sales of ''productive units'' by SSAB, we have followed the same methodology used in the *Final Determination* (58 FR at 37385). In accordance with that methodology, a portion of the price paid when a productive unit is sold is allocable to the repayment of subsidies received in prior years by the seller of the productive unit. The subsidies allocated to the POR have been reduced for all of the programs, as described above. These subsidies were further adjusted by the asset value of the productive unit. For a further explanation of the Department's methodology regarding ''sales of productive units'' and these calculations, see the ''Restructuring'' section of the *General Issues Appendix* (58 FR at 37265).

To calculate the benefit provided to SSAB, we multiplied the benefit calculated for 1993, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after the partial privatization. We then divided the results by the company's total sales in 1993.

Analysis of Programs

Based upon our analysis of the questionnaire responses, verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

1. Equity Infusion

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 0.82 percent *ad valorem*.

2. Structural Loans

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 0.38 percent *ad valorem*.

3. Forgiven Reconstruction Loans

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 1.77 percent *ad valorem*.

4. Grants for Temporary Employment for Public Works

In the preliminary results we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary finding that the net subsidy for this program is 0.01 percent *ad valorem*.

II. Programs Found Not To Confer Subsidies

In the preliminary results we found that the following programs did not confer countervailable benefits during this period of review:

1. Research & Development (R&D) Loans and Grants.

2. Fund for Industry and New Business Research and Development

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

III. Programs Found Not To Be Used

In the preliminary results we found the following programs to be not used:

1. Regional Development Grants.
2. Transportation Grants.
3. Location-of-Industry Loans.

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

IV. Program Found To Be Terminated

In the preliminary results we found the State Stockpiling Subsidies program to be terminated. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our preliminary findings.

Analysis of Comments

Comment 1: Petitioners argue that the Department's privatization methodology is contrary to economic reality and the requirements of the countervailing duty law. According to petitioners, the Department's determination that privatization ''repays'' a portion of the subsidies received before privatization is contrary to economic reality because the resources provided by the government to SSAB, which the market would not have provided, still remain with SSAB after privatization and continue to benefit the production of the merchandise. No resources were transferred from SSAB to the Government of Sweden (GOS). Furthermore, they contend that the Department's privatization methodology is contrary to the countervailing duty law because the countervailing duty statute, 19 U.S.C. § 1671(a), requires that subsidies bestowed upon the production, manufacture, or exportation of merchandise imported into the United States be countervailed. Since the subsidies received by SSAB continue to benefit its production of the subject merchandise after the partial privatizations, these subsidies continue to be fully countervailable.

The respondent argues in rebuttal that the new shareholders' arm's length purchases result in the repayment of prior subsidies as a matter of economic reality and as a result of the functional identity between a company and its shareholders in the context or privatization.

Department's Position: We disagree with petitioners. The Department previously addressed this issue in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* (58 FR 37385, July 9, 1993) (*Final Determination*) and in the

General Issues Appendix appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37261—2, July 9, 1993) (*General Issues Appendix*). In this proceeding, petitioners have not submitted any new arguments which would warrant reconsideration of this issue.

Comment 2: Petitioners argue that the Department's privatization methodology is flawed and not supported by facts. Petitioners contend that the basis of the Department's methodology is that purchasers of shares in a subsidized company paid more for those shares than they would otherwise have absent subsidization; that because the new owners are presumably profit-maximizers, the privatized firm must now generate a reasonable rate of return on the owner's investment; and that to the extent that the new owners invested more in the company because of the subsidies, the company presumably faces an obligation to generate more earnings so as to provide a reasonable rate of return. They argue that this premise is incorrect, and that the Department is confusing countervailable subsidy benefits with the effects of subsidies on the value of the company. Petitioners also argue that the Department's repayment methodology assumes that private investors have different expectations than government investors, however the Department offers no evidence to support this assumption. Finally, petitioners argue that if the repayment methodology applies to purchases of shares in state-owned companies, it must also apply to purchases of shares in private companies that have received subsidies.

Department's Position: The arguments presented by the petitioners have been previously addressed by the Department. *See General Issues Appendix* (58 FR 37217, at 37259, 37264). In this proceeding petitioners have presented no new evidence or arguments regarding this issue that would warrant reconsideration of the Department's determination that past subsidies bestowed upon SSAB are affected by privatization. Thus, the Department's preliminary results remain unchanged with respect to this issue.

We note, however, that petitioners went beyond the Department's position in outlining their interpretation of the basis of the Department's methodology by stating that ''purchasers of shares in a subsidized company paid more for those shares than they would have, and that to the extent that the new owners invested more in the company because of the subsidies, the company presumably faces an obligation to generate more earnings to provide a reasonable rate of return.'' The Department neither stated nor implied such a position. The Department has stated that the owner-shareholders' expectations of a return on their investment cannot be separated from the profitability of the newly privatized company, and that the owners will seek to extract a rate of return from their company at least equal to that of alternative investments of similar risk. The Department also stated that to the extent that a portion of the price paid for a privatized company can reasonably be attributed to prior subsidies, that portion of those subsidies will be extinguished. *See General Issues Appendix* (58 FR 37217, at 37262).

Comment 3: Petitioners contend that the Department's privatization methodology was rejected by the Court of International Trade (CIT) in *British Steel plc* v. *United States, British Steel plc* v. *U.S.*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*). Petitioners contend that in *British Steel,* the court stated that it would seem at best that the only way to extinguish a previously given gift or subsidy would be to repay the gift or subsidy to the original donor government. To the extent that the sale of shares involves only a change in the beneficial ownership of the company, it does not cause any change in the company itself and no such repayment occurs. Petitioners also contend that although the CIT's statements in British Steel regarding repayment are dicta, in the final remand determinations in *British Steel,* the Department accepted the CIT's reasoning and abandoned its repayment methodology. Therefore, the petitioners argue that because SSAB has not repaid the GOS for prior subsidies, such benefits remain with the company, and are countervailable.

Respondent contends that because the CIT has yet to issue its final judgment in *British Steel,* it is inappropriate to even suggest that the CIT's opinion has any bearing on this case.

Department's Position: We disagree with petitioners. The CIT has not entered an order with respect to the remand determinations in *British Steel.* The Department is not required to follow a CIT opinion that is still subject to litigation and to which the Department has not acquiesced. In such instances, the Department does not change its methodology while litigation is pending. *See, Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review* (59 FR 13700, at 13702; March 23, 1994). Therefore, we have followed our privatization methodology as set forth in the *Final Determination.*

Comment 4: Petitioners argue that the Department has failed to explain the logic underlying its privatization methodology. Specifically, petitioners argue that the Department has failed to explain why a ratio of the subsidies received by a company each year to the company's net worth in that year serves as a ''reasonable surrogate'' for the percentage of the company's net value that the subsidies represent, and how a simple arithmetic average of these ratios relates to the value of the subsidies at the time the company is sold, much less to the extinguishment of subsidy benefits.

Respondent argues that the Department has substantial discretion and wide latitude in developing reasonable methodologies to properly implement the countervailing duty law. As a factual matter, the Department has adequately explained the bases for its repayment formula in the *General Issues Appendix.*

Department's Position: As explained in the *General Issues Appendix,* the methodology applied by the Department attempts to estimate the proportion of the purchase price attributable to subsidies. The ratio, cited by petitioners, represents, in the Department's view, the most reasonable approach to that estimation. In arguing the issue of the impact of privatization upon formerly government-owned companies which previously benefitted from subsidies, petitioners in the *Final Determination* stated that privatization does not affect the amount of subsidies allocable to the privatized steel companies, while respondents argued that privatization of a government-owned company extinguishes any pre-existing subsidies. The Department considered, but ultimately rejected, both of these extreme positions. The Department determined that prior subsidies are allocable to the privatized companies upon their sale to private parties. However, it also concluded that a portion of the price paid by the private parties constituted repayment for the subsidies previously bestowed on the formerly government-owned companies.

The Department recognized that any methodology developed to determine what portion of the sales price constituted repayment for prior subsidies would yield only a rough estimate. In attempting to estimate that portion of the purchase price attributable to prior subsidies, the Department concluded that the most reasonable approach was to look at ratio of the privatized company's subsidies (over time) to the company's net worth

during the period from 1977 (the earliest point at which subsidies providing countervailable benefits in the period of investigation could have been bestowed) until the year before privatization. The subsidy-to-net worth ratio is intended to provide the Department with an estimate of the contribution subsidies have made to the value of a company.

Final Results of Review

In accordance with 19 CFR § 355.22(b)(1), an administrative review ''normally will cover entries or exports of merchandise during the most recently completed reporting year of the government of the affected country.'' However, because this is the first administrative review of this countervailing duty order, in accordance with 19 CFR § 355.22(b)(2), it covers the period, and the corresponding entries, ''from date of suspension of liquidation * * * to the end of the most recently completed reporting year of the government of the affected country.'' This period is December 7, 1992 through December 31, 1993.

The Department issued its preliminary affirmative countervailing duty determination in the investigation on December 7, 1992 (57 FR 57793). On March 8, 1993 in accordance with section 705(a)(1) of the Act, as amended, we aligned the final countervailing duty determinations with the final antidumping duty determinations on certain steel products from various countries (58 FR 12935; March 8, 1993). Under 19 CFR 355.20(c)(1)(ii), and pursuant to article 5.3 of the GATT Subsidies Code, the Department cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order. Accordingly, the Department instructed Customs to terminate the suspension of liquidation of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 6, 1993. The Department reinstated suspension of liquidation and the cash deposit requirement for entries made on or after August 17, 1993, the date of publication of the countervailing duty order. Thus, merchandise entered on or after April 6, 1993, and before August 17, 1993 is to be liquidated without regard to countervailing duties.

For the periods December 7, 1992 through April 5, 1993, and August 17, 1993 through December 31, 1993, we determine the net subsidy to be 2.98 percent *ad valorem*.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

Period	Manufacturer/ exporter	Rate (percent)
December 7, 1992–April 5, 1993.	All companies	2.98
April 6, 1993–August 16, 1993.	All companies	.....
August 17, 1993–December 31, 1993.	All companies	2.98

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 2.98 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all manufacturers, producers, and exporters, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

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)) and 19 CFR 355.22.

Dated: January 31, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–3068 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Admiistration

[I.D. 020696D]

Gulf of Maine Take Reduction Team Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Take Reduction Team (TRT) for the Gulf of Maine (GME) harbor porpoise/sink-gillnet fishery will hold a meeting to develop a Take Reduction Plan (TRP) as described in the Marine Mammal Protection Act (MMPA) focusing on reducing bycatch in the sink-gillnet fisheries of the GME and the Bay of Fundy, Canada.

DATES: The meeting will be held on February 14 and 15, 1996, 8:30 a.m. until 4:30 p.m.

ADDRESSES: The TRT meeting will be held at the King's Grant Inn/Quality Inn, on Route 128, Danvers, MA 01923, (508) 774–6800.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, (508) 281–9254, or Michael Payne, (301) 713–2322

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor. The Stock Assessment Report and the calculated PBR was published by NMFS in July 1995.

The MMPA defines a ''strategic stock'' as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; or which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term ''potential biological removal,'' or PBR, as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' The GME harbor porpoise population was proposed as threatened under the ESA on January 7, 1993, and the bycatch of the GME population of harbor porpoise (approximately 1,300 per year in 1992 and 1993) is significantly greater (an order of magnitude greater) than the calculated PBR (approximately 400). The GME population of harbor porpoise, therefore, is considered ''strategic'' under the MMPA.

For a strategic stock, section 118(f) of the MMPA requires NMFS to appoint a TRT, and this TRT must develop a TRP designed to assist in the recovery or

prevent the depletion of each strategic stock of marine mammal and which interacts with a commercial fishery. Section 118(f)(6)(C) states that members of the TRTs shall have expertise regarding the conservation or biology of the marine mammal species that the take reduction plan will address, or the fishing practices that result in the incidental mortality and serious injury of such species.

The MMPA further specifies that members of the TRT shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types that incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as the Secretary of Commerce deems appropriate.

As a result of draft stock assessment reviews developed under section 117 of the MMPA, and as a result of an extended interview process conducted by a NMFS-contracted facilitator, NMFS, through a letter dated November 1995, has asked the following individuals to be a member of a TRT focusing on reducing bycatch of harbor porpoise in the GME sink-gillnet fishery:

Erik Anderson, New Hampshire Commercial Fishermens Association; Janice Anderson-Comeau, Massachusetts Netter's Association; Jennifer Atkinson, Conservation Law Foundation; Tina Berger, Atlantic States Marine Fisheries Commission; Jeannette Bubar, Maine Gillnetter's Association; Kevin Chu, NMFS Regional Office; Paul Cohan, Cape Ann Gillnetter's Association; Jeremy Conway, Department of Fisheries and Oceans-Canada; Russell DeConti, Center for Coastal Studies; Chris Finlayson, Maine Department of Natural Resources; Patricia Fiorelli, New England Fishery Management Council; James Gilbert, University of Maine; Cathy Homstead, Maine Gillnetter's Association; Scott Kraus, New England Aquarium; David Laist, Marine Mammal Commission; Robert MacKinnon, Massachusetts Netter's Association; Michael Payne, NMFS Office of Protected Resources; David Pierce, Massachusetts Division of Marine Fisheries; Andrew Read, Duke University; Bruce Smith, New Hampshire Fish and Game; Ron Smolowitz, East Falmouth, MA; Terry Stockwell, Maine Gillnetter's Association; April Valliere, Rhode Island Division of Fish and Wildllife; David Wiley, International Wildlife Coalition; John Williamson, New Hampshire Commercial Fishermen's Association; Nina Young, Center for Marine Conservation; Sharon Young, The Humane Society of the United States. The TRT will be facilitated by Abby Arnold, RESOLVE-Center for Environmental Dispute Resolution, Washington, D.C.

NMFS fully intends to convene a TRT process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of any one team. TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

Section 118 (6)(A)(ii) also requires NMFS to publish the range of the strategic marine mammal stock, and all commercial fisheries that cause incidental mortality and serious injury from such stock. The GME population (stock) of harbor porpoise ranges from the Bay of Fundy, Canada (summer distribution), south to at least North Carolina in the winter until late spring. The GME sink- gillnet fishery interacts with this stock throughout the year, but the estimated bycatch from this fishery is greatest during fall and spring. The interactions (estimated bycatch) by this fishery with harbor porpoise are greater than those of all other fisheries combined.

Harbor porpoise are also known to interact with a series of coastal gillnet fisheries that operate, primarily, in state waters from New Jersey south to North Carolina. The extent (number of takes) of these interactions is not known; however, the greatest number of interactions (based on strandings data) in these fisheries occurs from mid-March through May in North Carolina and Virginia. These interactions will not be considered by this TRT, because they occur in markedly different fisheries from the GME sink-gillnet fishery and primarily in state waters, which are under a different jurisdiction from the GME sink- gillnet fishery. Another TRT, or a different management process focusing on management of state fisheries, will address the bycatch of harbor porpoise in the mid-Atlantic coastal gillnet fisheries.

Dated: February 6, 1996.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–3013 Filed 2–9–96; 8:45 am]

BILLING CODE 3510–22–F

National Oceanic and Atmospheric Administration

[I.D. 020696C]

Pacific Offshore Fisheries Take Reduction Team Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Take Reduction Team (TRT) for the Pacific offshore cetacean/drift gillnet fishery will hold its first meeting to develop a Take Reduction Plan (TRP) as described in the Marine Mammal Protection Act (MMPA) focusing on reducing bycatch in the California/Oregon drift gillnet fishery for thresher shark and swordfish.

DATES: The meeting will be held on February 13 and 14, 1996, at 10 a.m. and 9 a.m., until 5:30 p.m.

ADDRESSES: The TRT meeting will be held at the Crown Sterling Suites Hotel at Los Angeles International Airport, 1440 East Imperial Avenue, El Segundo, CA 90245, (310) 640–3600.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, (310) 980–4016, or Victoria Cornish, (301) 713–2322.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor. Stock Assessment Reports and the calculated PBR were published by NMFS in July 1995.

The MMPA defines a ''strategic stock'' as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term ''potential biological removal,'' or

PBR, as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' The California/Oregon drift gillnet fishery for thresher shark and swordfish interacts with several strategic marine mammal stocks including: Several *Mesoplodon* species of beaked whales, Baird's beaked whale, Cuvier's beaked whale, the sperm whale, the humpback whale, the pygmy sperm whale, and the short-finned pilot whale. These stocks are considered strategic under the MMPA because they are either listed as an endangered or threatened species under the ESA or because the level of human-caused mortality is greater than their PBR levels.

Section 118(f) of the MMPA requires NMFS to establish a TRT to prepare a draft TRP designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. Section 118(f)(6)(C) requires that members of the TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality and serious injury of such species. The MMPA further specifies that members of the TRT shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as the Secretary of Commerce deems appropriate.

As a result of stock assessment reports developed under section 117 of the MMPA, and an extended interview process conducted by a NMFS-contracted facilitator, NMFS, through a letter dated February 1996, has asked the following individuals to be a member of the TRT, which will focus on reducing bycatch of the strategic marine mammals stocks taken as bycatch in the California/Oregon drift gillnet fishery for thresher shark and swordfish:

Doyle Hanan, California Department of Fish and Game; Marilyn Beeson, California Department of Fish and Game; Dave Hanson, Pacific States Marine Fisheries Commission; Anthony West, California Gillnetters Association; Chuck Janisse, Pacific Offshore Fishermen's Association; Lynn Stephy, drift gillnet fisher; Oriville Gardner, drift gillnet fisher; John Heyning, Los Angeles Museum of Natural History; John Calambokidis, Cascadia Research Collective; Sus Kato, retired research fishery biologist; Marcie Glazer, Center for Marine Conservation; Ann Nothoff, Natural Resources Defense Council; Hannah Bernard, Hui Moana; Irma Lagomarsino, NMFS Southwest Regional Office; Jay Barlow, NMFS Southwest Fisheries Science Center; David Holts, NMFS Southwest Fisheries Science Center. The TRT will be facilitated by Alana Knaster, Mediation Institute, Woodland Hills, CA.

NMFS fully intends to convene a TRT process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of any one team. TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

Dated: February 6, 1996.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–3014 Filed 2–9–96; 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 Brazilian ''C'' Brady Bonds, Brazilian ''El'' Brady Bonds, and Argentine ''FRB'' Brady Bonds

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 Brazilian ''C'' Brady Bonds, Brazilian ''El'' Brady Bonds, and Argentine ''FRB'' Brady Bonds. 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 March 13, 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 futures and options on Brazilian ''C'' Brady Bonds, Brazilian ''El'' Brady Bonds, and Argentine ''FRB'' Brady Bonds.

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 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, D.C. 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 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 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 CFR 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 February 5, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–3002 Filed 2–9–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12–13 February 1996.

Time of Meeting: 0900–1800, 12 February 1996 and 0800–1800, 13 February 1996.

Place: Fort Belvoir, VA.

Agenda: The Army Science Board's Study Panel on Reengineering the Acquisition and Modernization Processes of the Institutional Army will meet to discuss the current status of Army Modernization and discuss plans to reeingineer the Acquisition and Modernization processes. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer Army Science Board.

[FR Doc. 96–3009 Filed 2–9–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132B]

Training and Technical Assistance for the Centers for Independent Living Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1996

Purpose of Program: This program provides support to entities that have experience in the operation of centers for independent living to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living.

Eligible Applicants: To be eligible to apply for funds under this program, an entity must demonstrate in its application that it has experience in the operation of centers for independent living. Experience of an applicant in the operation of a center for independent living is determined by the extent to which the applicant's management and staff have engaged in planning, developing, conducting, administering, and evaluating centers for independent living. A center for independent living is defined in section 702(1) of the Rehabilitation Act of 1973, as amended, as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

Supplementary Information: The Secretary has determined that this grant requires substantial Federal involvement during the grant award period. Therefore, the award will be made as a cooperative agreement.

Deadline for Transmittal of Applications: March 29, 1996.

Deadline for Intergovernmental Review: May 29, 1996.

Applications Available: February 13, 1996.

Available Funds: $826,630.

Estimated Average Size of Award: $826,630.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 366.

For Applications Contact: Raymond Melhoff, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3327, Switzer Building, Washington, D.C. 20202–2741. Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Electronic copies of this application notice can be downloaded from the Rehabilitation Services Administration's electronic bulletin board, (202) 205–5574 (2400 bps) and (202) 205–9694 (9600 bps).

For Further Information Contact: Raymond Melhoff, telephone: (202) 205–9320, or John Nelson, telephone: (202) 205–9362 (Voice and TDD), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3327, Switzer Building, Washington, D.C. 20202–2741.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 721(e)(1)(B)

Dated: February 7, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–3016 Filed 2–9–96; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.132A]

Centers for Independent Living; Notice Inviting Applications for a New Center for Fiscal Year (FY) 1996

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973 (Act), as amended, consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4; have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); and be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725 (b) and (c) of the Act and Subparts F and G of 34 CFR Part 366 and either—(1) not be currently receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center

may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to those entities proposing to serve areas that are unserved or underserved in the following States and territories listed under *Available Funds*.

Deadline for Transmittal of Applications: March 29, 1996.

Deadline for Intergovernmental Review: May 29, 1996.

Applications Available: February 13, 1996.

Available Funds: $517,175 distributed in the following manner:

Delaware—$60,619
Florida—$76,420
Georgia—$44,020
Illinois—$42,258
Kentucky—$7,497
Pennsylvania—$34,921
Texas—$97,394
American Samoa—$154,046

The above-listed amounts are based on funding of this program at the Administration's fiscal year 1996 requested level ($41,749,000). However, the annual level established by the current short-term continuing resolution is $40,533,000, the same amount appropriated for fiscal year 1995. If this level remains in effect for the remainder of fiscal year 1996, only the following funds will be available:

Delaware—$48,919
American Samoa—$154,046

Estimated Range of Awards: $7,497 to $154,046

Estimated Number of Awards: 1 per eligible State or territory.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 364 and 366.

For Applications Contact: Donald Thayer, U.S. Department of Education, 600 Independence, S.W., Room 3323, Switzer Building, Washington, D.C. 20202–2741. Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Electronic copies of this application notice can be downloaded from the Rehabilitation Services Administration's electronic bulletin board (202) 205–5574 (2400 bps) and (202) 205–9694 (9600 bps).

For Further Information Contact: Donald Thayer, telephone: (202) 205–9315, or John Nelson, telephone: (202) 205–9362 (Voice and TDD), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3323, Switzer Building, Washington, D.C. 20202–2741.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for this competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f)

Dated: February 7, 1996.

Judith E. Heumann,

Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 96–3015 Filed 2–9–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: February 22, 1996, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 503A/529A, 200 Independence Avenue, SW. Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities: and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) update the membership on the strategic planning process; and (2) discuss issues related to Champus and the Individuals with Disabilities Education Act.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. the meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–3017 Filed 2–9–96; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 29–March 2, 1996.

TIME: February 29—Subject Area Committee #1, 4:00–6:00 p.m. (open); Achievement Levels Committee, 4:00–6:00 p.m. (open); Executive Committee, 7:00–9:00 p.m. (open). March 1—Full Board, 8:30 a.m.–10:00 a.m. (open); Design and Methodology Committee, Reporting and Dissemination Committee, 10:00–11:15 a.m. (open); Joint Meeting Design and Methodology and Reporting and Dissemination Committees, 11:15–12:00 Noon (open); Subject Area Committee #2, 10:00 a.m.–12:00 Noon (open); Full Board 12:00 Noon–4:30 p.m. (open). March 2—Nominations Committee, 8:00–9:00 a.m. (closed). Full Board, 9:00 a.m. until adjournment, approximately, 12:00 Noon (open).

LOCATION: The Ritz-Carlton Hotel—Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On February 29, two committees will meet in open session from 4:00–6:00 p.m. Subject Area Committee #1 will meet to review and discuss issues regarding the NAEP civics planning project. The Achievement Levels Committee will meet to discuss plans for conducting the upcoming meetings for the setting of achievement levels in science. Also, on February 29, the Executive Committee will meet in open session from 7:00 p.m.–9:00 p.m. The agenda for the Executive Committee includes a briefing on the NAEP budget, and discussions regarding the use of NAEP in projects sponsored by the National Science Foundation, and Westat.

On March 1, the full Board will convene in open session at 8:30 a.m. The agenda for this session of the full Board meeting includes approval of the agenda, the Executive Director's Report, a Report on TIMSS (The Third International Math and Science Study), and an update on the NAEP project. Between 10:00 a.m. and 12:00 noon, there will be open meetings of the following subcommittees: Design and Methodology, Reporting and Dissemination, and Subject Area Committee #2. Design and Methodology will discuss design issues related to future assessments, specifically, domain scoring and computer adaptive testing. Agenda items for the Reporting and Dissemination Committee include schedules for the release of NAEP data, reporting of information on special student populations, and dissemination of assessment frameworks. Beginning at 11:15 a.m. until 12:00 noon, there will be a joint meeting of the Design and Methodology and Reporting and Dissemination Committees to discuss the issues related to the implementation of a Marketbasket approach to NAEP reporting. Subject Area Committee #2 will meet to review and discuss issues regarding the NAEP writing planning project.

The full Board will reconvene in open session, beginning at 12:00 noon, to hear a presentation on NAEP on the information superhighway, a briefing from its workgroup on planning, and a presentation on the Civics frameworks.

On March 2, the Nominations Committee will meet in closed session from 8:00–9:00 a.m. This meeting must be closed because the committee will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Beginning at 9:00 a.m. the full Board will reconvene in open session. The agenda for this session includes a briefing on plans for the NAEP Evaluation by the National Academy of Sciences, and reports from the Board's standing subcommittees—Subject Area Committees #1 and #2, Achievement Levels, Reporting and Dissemination, Design and Methodology, and Executive. The meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 Noon.

A summary of the activities of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: February 7, 1996.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 96–3058 Filed 2–9–96; 8:45 am]

BILLING CODE 4000–01–M

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of extension of application deadline dates for certain direct grant programs.

SUMMARY: The Secretary extends the deadline dates for the submission of applications under certain direct grant programs. These are some of the programs under which the Secretary or other principal officers of the Department have announced competitions for new awards for fiscal year (FY) 1996. The Secretary also revises the deadlines for intergovernmental review for any of these programs subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs). The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants adversely affected by the closure of the Department for a number of weeks. The extensions are intended to help these potential applicants compete fairly under these programs.

DATES: *Group I:* The new deadline date for applications under each program listed under the heading ''Group I'' is March 13, 1996. (For an explanation of deadline date for applications, please see the Department of Education General Administrative Regulations (EDGAR), 34 CFR 75.102.)

For programs in Group I that are subject to Executive Order 12372, the deadline date for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties is May 13, 1996.

Group II: Any new deadline date for transmitting applications under a program listed under the heading ''Group II'' is listed with that program.

ADDRESSES: For Applications or Further Information: The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program. The date and Federal Register citation of the application notice are listed for each program.

For one program of the Office of Educational Research and Improvement listed in Group I—CFDA No. 84.309B (Education Research and Development Centers Program—Priority Area: Improving Adult Learning and Literacy)—the new contact person for applications or further information is Jerome Lord, 555 New Jersey Avenue, NW., room 627, Washington, DC 20208–5531. Telephone: (202) 219–2242.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Intergovernmental Review: The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to the notice inviting applications for new awards under direct grant programs and fellowship programs published in the Federal Register on August 10, 1995 (60 FR 40956).

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

SUPPLEMENTARY INFORMATION: Due to a lack of appropriated funds in November, December and early January and inclement weather in January, the Department of Education, like many other Federal agencies, was closed for a number of weeks. As a result, many prospective applicants were unable to obtain application packages, others could not receive answers to questions about their applications, and still others were precluded from receiving technical assistance in the preparation of their applications.

Although the Department was fully operational by mid-January, the backlog of requests and inquiries affected not only those programs and competitions with originally or previously announced deadline dates between December 18, 1995 and January 12, 1996, inclusive, but those with deadlines established for the next several weeks.

Thus, with the exception of programs or competitions listed under Group II, the Secretary has decided to extend—until 30 days from the date of publication of this notice in the Federal Register—the application deadline date of each program or competition with a deadline date between December 18, 1995 and February 15, 1996. These programs or competitions are listed under Group I, together with their respective Catalogue of Federal Domestic Assistance (CFDA) numbers and a citation (including the date and page number) for their respective application notices—and for any follow-up notices—previously published in the Federal Register.

Applicants should note that in the September 14, 1995 (60 FR 47830) application notice for the FIS (field-initiated studies) grant programs of the Office of Educational Research and Improvement listed in Group I, the Department required applicants to use a ''non-proportional 12-point or larger font'' in preparing the application narrative. However, the Department has decided to eliminate the ''non-proportional'' requirement and to accept all otherwise eligible applications in which the narrative is prepared in 12-point or larger font.

Group II contains other programs and competitions with announced deadlines also between December 18, 1995 and February 15, 1996 but requiring special consideration.

GROUP I

CFDA No.	Name of program	Application notice
	Office of Educational Research and Improvement	
84.305F ...	National Institute on Student Achievement, Curriculum, and Assessment FIS (Field-Initiated Studies) Grant Program.	9/14/95 (60 FR 47830).
84.306F ...	National Institute on the Education of At-Risk Students FIS Grant Program	9/14/95 (60 FR 47830).
84.307F ...	National Institute on Early Childhood Development and Education FIS Grant Program	9/14/95 (60 FR 47830).
84.308F ...	National Institute on Educational Governance, Finance, Policymaking, and Management FIS Grant Program.	9/14/95 (60 FR 47830).
84.309F ...	National Institute on Postsecondary Education, Libraries, and Lifelong Learning FIS Grant Program.	9/14/95 (60 FR 47830).
84.309B ...	Education Research and Development Centers Program— Priority Area: Improving Adult Learning and Literacy.	9/14/95 (60 FR 47826); 11/29/95 (60 FR 61247).

GROUP I—Continued

CFDA No.	Name of program	Application notice
	Office of Special Education and Rehabilitative Services *Office of Special Education Programs*	
84.023F ...	Examining Alternatives for Results Assessment for Children with Disabilities	8/10/95 (60 FR 40956); 8/25/95 (60 FR 44326).
84.180U ...	Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities.	8/10/95 (60 FR 40956).
84.237G ...	Non-Discriminatory, Culturally Competent Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems.	8/10/95 (60 FR 40956).
	Rehabilitation Services Administration	
84.128G ...	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.	8/10/95 (60 FR 40956).
84.128J	Projects for Initiating Recreation Programs for Individuals with Disabilities	8/10/95 (60 FR 40956).

Group II

Office of Bilingual Education and Minority Languages Affairs

CFDA No. 84.194Q Bilingual Education—State Grant Program. (8/10/95 (60 FR 40956)) Applications for this program were not available until the beginning of February. In order to give applicants sufficient time to develop and submit quality applications, the Secretary has extended the application deadline date. The original deadline date was January 26, 1996. The new deadline date for the submission of applications is March 22, 1996. The new deadline date for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties is May 21, 1996.

CFDA No. 84.195E Bilingual Education—Career Ladder Program. (8/10/95 (60 FR 40956)) Applications for this program were not available until the beginning of February. In order to give applicants sufficient time to develop and submit quality applications, the Secretary has extended the application deadline date. The original deadline date was January 5, 1996. The new deadline date for the submission of applications is March 22, 1996. The new deadline date for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties is May 21, 1996.

CFDA No. 84.288S Bilingual Education—Program Development and Implementation Grants. (8/10/95 (60 FR 40956); 8/25/95 (60 FR 44326)) Applications for this program were not available until the beginning of February. In order to give applicants sufficient time to develop and submit quality applications, the Secretary has extended the application deadline date. The original deadline date was January 26, 1996. The new deadline date for the submission of applications is March 22, 1996. The new deadline date for the transmittal of State Process Recommendations by SPOCs and comments by other interested parties is May 21, 1996.

Office of Elementary and Secondary Education

CFDA No. 84.004C Desegregation of Public Education—State Educational Agency (SEA) Desegregation Program. (12/20/95 (60 FR 65644)) Office of Management and Budget (OMB) approval of information collection has expired. After OMB's extension or renewal of this approval, the Department will announce a new deadline date for receipt of applications.

CFDA No. 84.004D Desegregation of Public Education—Desegregation Assistance Center (DAC) Program. (12/20/95 (60 FR 65643)) Office of Management and Budget (OMB) approval of information collection has expired. After OMB's extension or renewal of this approval, the Department will announce a new deadline date for receipt of applications.

Impact Aid fiscal year 1996 section 8002 grants and fiscal year 1997 section 8003 grants. The annual application deadline, as specified by Impact Aid regulations (34 CFR 222.3), is January 31. A notice extending the application deadline date for these grants is being published separately in the Federal Register.

Office of Postsecondary Education

CFDA No. 84.204A School, College, and University Partnerships Program (8/10/95 (60 FR 40956)) The Secretary has determined it is unlikely that funds will be sufficient to make new awards under this program in FY 1996. Therefore, the Department is not currently making applications available.

CFDA No. 84.116J Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition (Invitational Priority: Institutional Cooperation and Student Mobility between United States and Member States of European Union) (10/30/95 (60 FR 55248)) This competition is being held by FIPSE in cooperation with a similar competition for European institutions being conducted by Directorate General XXII (Task Force on Education and Training of Youth) of the European Commission. Because the European participants have a different fiscal year from that of the U.S., they are required to obligate funds for their competition by March 31, 1996. An extension of the deadline for receipt of applications in the FIPSE competition would likely preclude the European partners of U.S. applicants from securing further European funding. Thus, the Secretary has determined that the application deadline date should not be extended.

Office of Special Education and Rehabilitative Services/Office of Special Education Programs

CFDA No. 84.158A State Systems for Transition for Youth with Disabilities (8/10/95 (60 FR 40956)) This competition was open only to State agencies that had not received a grant under the program. The application deadline date was December 22, 1995. The Department has confirmed that all eligible applicants that intended to submit applications did so before the deadline date. Thus, the Secretary has determined that an extension of the application deadline date is not necessary.

Office of Special Education and Rehabilitative Services/National Institute on Disability and Rehabilitation Research

CFDA No. 84.133D Knowledge Dissemination and Utilization Program (Priority: Regional Disability and Business Technical Assistance Centers) (12/12/95 (60 FR 63868)) Publication of the application announcement just before the closure of the Department on December 18 effectively precluded most potential applicants from obtaining applications until mid-January. Because the program office initially had granted potential applicants two months in which to develop and submit applications, the Secretary extends by 30 days the initial deadline date of February 12, 1996. The new deadline date for the submission of applications is March 13, 1996.

Office of Vocational and Adult Education

CFDA No. 84.278D School-to-Work Opportunities—Urban/Rural Opportunities Grants (11/14/95 (60 FR 57276)) Under section 303(b)(1) of the School-to-Work Opportunities Act, applicants were required to submit completed applications for this program to their States for comment no later than December 29, 1995. Since applicants had to have completed their applications by December 29, it is unlikely that either the lapse in appropriations or the inclement weather would have interfered with potential applicants' ability to meet the deadline for submission to the Department by January 29, 1996. Thus, the Secretary has determined that no extension is necessary for submission of applications. The Department of Labor, which jointly administers this program, concurs with this decision.

Eligibility

The extensions granted in this notice are intended primarily to assist potential applicants that were unable to obtain applications or further information. However, any applicant that previously submitted an application under any program or competition for which an extension is granted by this notice may submit an amended or replacement application. In that case, the applicant is requested to (1) indicate clearly that the application being submitted is an amendment or replacement; and (2), if the applicant has received an acknowledgment receipt postcard from the Department's Application Control Center, include the PR number assigned to the application, as indicated on the postcard.

Available Funds

Applicants should note that the Congress has not yet enacted a fiscal year 1996 appropriation for the Department. However, based on actions taken so far, the Congress may eliminate or reduce funding in 1996 for some of the discretionary grant programs referenced in this notice. Thus, final action on the 1996 appropriation may require the Department to cancel some of these competitions.

THE DEPARTMENT OF EDUCATION IS NOT BOUND BY ANY OF THE ESTIMATES IN THE APPLICATION NOTICES ANNOUNCING THE COMPETITIONS REFERENCED IN THIS NOTICE.

Authority: 20 U.S.C. 3474.

Dated: February 8, 1996.

Richard W. Riley,

Secretary of Education.

[FR Doc. 96–3165 Filed 2–9–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–136–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 6, 1996.

Take notice that on February 1, 1996, Algonquin Gas Transmission Company (Algonquin), filed revised tariff sheets in compliance with Section 154.204 of the Commission's Regulations under the Natural Gas Act and Order Nos. 581 and 582 (Final Rules). The following tariff sheets have been revised:

Fourth Revised Volume No. 1

Title Page
First Revised Sheet No. 15
Third Revised Sheet No. 103
Third Revised Sheet No. 105
Second Revised Sheet No. 106
Third Revised Sheet No. 118
Third Revised Sheet No. 120
First Revised Sheet No. 121
Third Revised Sheet No. 137
Third Revised Sheet No. 140
Third Revised Sheet No. 154
Third Revised Sheet No. 157
Second Revised Sheet No. 172
First Revised Sheet No. 174
First Revised Sheet No. 175
Fourth Revised Sheet No. 600
First Revised Sheet No. 610
First Revised Sheet No. 617
Second Revised Sheet No. 654
Third Revised Sheet No. 688
Third Revised Sheet No. 690
Second Revised Sheet No. 701
Original Sheet No. 713
Original Sheet No. 714
Sheet Nos. 715–798

First Revised Volume No. 2

Title Page

Algonquin states that the purpose of this filing is to conform to the Commission's updated Regulations set forth in the Final Rule pertaining to the form and composition of an interstate pipeline company's tariff. Algonquin respectfully requests that these tariff sheets be accepted effective March 1, 1996.

Algonquin states that copies of this tariff filing were mailed to all firm customers of Algonquin and interested state commissions.

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, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2941 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1417–001 and 1835–013]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Notice of Time for Public Briefing

February 6, 1996.

The public briefing noticed on January 25, 1996 (61 FR 3394, January 31, 1996), will be held at 11:00 a.m. on Wednesday, February 14, 1996, in the Commission Meeting Room, located on the second floor of 888 First Street NE., Washington, DC.

The public briefing is being held in response to a request by the U.S. Department of the Interior to inform the Commission about the status of negotiations under the Memorandum of Agreement for the Central Platte River Basin Endangered Species Recovery Implementation Program.

For additional information concerning the briefing, please refer to the January

25 notice or contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2936 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2389–012]

Edwards Manufacturing Company, Inc., City of Augusta, ME; Notice of Amendment of Application

February 6, 1996.

On October 30, 1995, Edwards Manufacturing Company, Inc., and the City of Augusta, Maine (applicants) filed an amendment to their application for a new license for the Augusta Hydroelectric Project No. 2389.

In the application for new license, filed January 31, 1991, it was proposed to expand the project capacity from 3.5 to 11 megawatts (MW). The amendment reduces the proposed expansion to about 4.3 MW. Under the application as amended, the licensees propose only to replace the existing flashboards with an inflatable crest control system, install permanent upstream and downstream fish passage facilities, and upgrade turbine efficiency. The Applicants would forego constructing a new powerhouse and modifying the existing power canal and gatehouse, as originally proposed. There would be no increase in existing hydraulic capacity. The increase in generating capacity (between 0.5 and 1.0 megawatts) would be directly attributable to increases in turbine efficiency.

Applicants state that the remaining project improvements and upgrades are substantially the same as improvements and upgrades proposed in the original application. Although the fish passage facilities proposed in the amendment are not those proposed in the application, they are the same facilities that applicants proposed in a 1990 application to amend the existing project license, and were designated in consultation with state and federal agencies and with other interested parties. The Commission approved the installation of these facilities, but the amendment was then withdrawn.[1]

We are providing an opportunity for additional interventions and for entities to reconsider their terms, conditions, prescriptions, and comments submitted previously with respect to the Augusta Project application. A draft environmental impact statement (DEIS) evaluating the licensing or relicensing of 11 projects, including the Augusta Project, in the Kennebec River Basin was mailed to parties on January 4, 1996. Notice of the DEIS was published in the Federal Register on January 26, 1996, setting a due date for comments of March 25, 1996. By letter of January 29, 1996, the Director, Division of Project Review, Office of Hydropower Licensing, extended the due date for comments to April 8, 1996. Comments on the Augusta Project amendment will also be due on April 8, 1996, with reply comments due 15 days later, on April 23, 1996.[2]

Copies of the application and amendment are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 42A North Elm Street, Second Floor, Yarmouth, Maine, or by calling (207) 846–3991. The applicant contact for this project is Mark Isaacson.

Contact Mr. John Blair (202) 219–2845 for questions relating to this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2938 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–393–000]

Jersey Central Power & Light Company; Notice of Filing

February 6, 1996.

Take notice that on December 19, 1995, Jersey Central Power & Light Company tendered for filing an amendment to the above-referenced docket.

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 14, 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. 96–2937 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–151–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 1, 1996.

Take notice that on January 23, 1996, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP96–151–000 a request pursuant to Sections 157.205 and 175.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to revise an existing two-inch tap through which Koch would make deliveries of gas in Plaquemines Parish, Louisiana, on behalf of Louisiana Gas Services (LGS), an LDC, under Koch's ITS Rate Schedule, under Koch's blanket certificate issued in Docket No. CP92–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch states that it currently provides interruptible service to LGS and that the volumes would be within LGS's entitlements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2943 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Edwards Manufacturing Company, Inc. and City of Augusta, Maine, 69 FERC ¶ 61,335 (1994). The Commission approved the facilities as an interim enhancement of fisheries only. On rehearing, the Commission granted the licensees' request to allow the withdrawal of the amendment application and vacated its order amending the license. 71 FERC ¶ 61.227 (1995).

[2] A further request for extension of time by the National Marine Fisheries Service was denied by letter of February 2, 1996, signed by Fred E. Springer, Director, Office of Hydropower Licensing.

[Docket No. RP96–67–000]

Mojave Pipeline Company; Notice of Technical Conference

February 6, 1996.

Pursuant to the Commission's order issued on December 29, 1995,[1] a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Thursday, March 7, 1996 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2940 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–854–000]

Northeast Utilities Service Company; Notice of Filing

February 1, 1996.

Take notice that on January 18, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide non-firm transmission service to Koch Power Services, Inc. (Koch) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to Koch.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

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 15, 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. 96–2994 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 73 FERC ¶ 61,390 (1995).

[Docket No. RP96–137–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 6, 1996.

Take notice that on February 1, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets, proposed to be effective March 1, 1996:

Fifth Revised Volume No. 1

Nineteenth Revised Sheet No. 50
Nineteenth Revised Sheet No. 51
Eighth Revised Sheet No. 52
28 Revised Sheet No. 53
Eighth Revised Sheet No. 59
Ninth Revised Sheet No. 60
First Revised Sheet No. 200
Original Sheet No. 237A
Original Sheet No. 237B

Original Volume No. 2

148 Revised Sheet No. 1C
23 Revised Sheet No. 1C.a

In this filing Northern is seeking to recover costs relating to take-or-pay, pricing or other contract provisions, and buyout, buydown or reformation costs pursuant to the Commission's Order No. 528.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2942 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–133–000]

Panhandle Eastern Pipe Line Company; Notice of Section 4 Filing

February 1, 1996.

Take notice that on January 30, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service upon the transfer of Panhandle's facilities [1] to Anadarko Gathering Company (AGC) and Panhandle Field Services Company (Field Services). AGC and Field Services will continue to offer gathering service to all existing shippers.

Panhandle has proposed an effective date of March 1, 1996, for the termination of services on the facilities. Panhandle states that in accordance with the Commission's regulations, a copy of the filing has been mailed to all of Panhandle's customers and applicable state commissions as well as to all parties to the proceedings in Docket Nos. CP95–21–000, CP95–22–000 and CP95–23–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed no later than February 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2944 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–006]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

February 6, 1996.

Take notice that on January 31, 1996, Tennessee Gas Pipeline Company

[1] Panhandle received authorization in Docket Nos. CP95–21–000, CP95–22–000 and CP95–23–000, 73 FERC ¶ 61,343 (1995), to abandon these facilities.

(Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective January 1, 1996:

Substitute Second Revised Sheet No. 204
Substitute Fourth Revised Sheet No. 205
Third Revised Sheet No. 205A
Substitute Original Sheet No. 205B
Substitute First Revised Sheet No. 206
Third Revised Sheet No. 209
Second Substitute First Revised Sheet No. 209A
Substitute First Revised Sheet No. 217
Substitute Original Sheet No. 314A
Substitute Original Sheet No. 314B
Substitute First Revised Sheet No. 393

Tennessee states that it is filing the instant tariff sheets to correct certain typographical errors and omissions that occurred in Tennessee's December 1, 1995, filing in this docket to implement Phase I of the Stipulation and Agreement filed on July 25, 1995 (S&A). Tennessee further states that the tendered tariff sheets do not effect any substantive change to the S&A.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2939 Filed 2–9–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $275,000,000 (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc., Case No. VEF–0030. The OHA has determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585–0107 (202) 586–2390 [Wieker]; (202) 586–2400 [Freimuth].

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute a total of $275,000,000 plus interest, remitted or to be remitted to the DOE, by Occidental Petroleum Corporation. The DOE is currently holding $100,000,000, plus accrued interest, of these funds in an interest bearing escrow account pending distribution. The DOE will receive additional annual payments of $35,000,000 plus interest during the years 1996 through 2000.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995 deadline for crude oil refund applications has passed, we will not accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. Any party whose crude oil application is approved will share in all crude oil overcharge funds.

Dated: January 31, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation Order

Name of Case: OXY USA, Inc.
Date of Filing: September 18, 1995.
Case Number: VEF–0030.

On December 1, 1995, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Proposed Decision and Order which tentatively established refund procedures for the distribution of the Occidental Petroleum Corporation (Occidental) consent order funds. After a review of the comments received, the DOE has determined that the procedures set forth in the Proposed Decision and Order should be adopted.

I. Background

A. The Occidental Enforcement Proceeding

The Occidental consent order concerned reciprocal crude oil transactions between Cities Service Corporation (Cities) and various crude oil resellers.[1] In those transactions, Cities sold price-controlled crude oil in its refinery inventory in exchange for deeply discounted exempt crude oil. Cities reported the exempt crude oil to the DOE Entitlements Program, thereby significantly reducing its entitlements obligations.

In 1985, the DOE's Economic Regulatory Administration, now the DOE's Office of General Counsel, Regulatory Litigation (OGC), issued a Proposed Remedial Order (PRO) to the firm. In 1988, the DOE issued a Remedial Order (RO) holding that the transactions violated the price regulations and that the violation amount of $264 million, plus interest, should be remitted to the DOE. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). The 1988 RO also remanded the issue of whether the transactions violated other regulations. Subsequently, the Federal Energy Regulatory Commission (FERC) reversed the 1988 RO, except for the remand provision. *Cities Service Oil and Gas Corp.*, 65 FERC ¶ 61,403 (1993), *reconsideration denied*, 66 FERC ¶ 61,222 (1994). A group of utilities, transporters, and manufacturers (the UTM) and a group of states appealed to federal district court, which dismissed their appeals for lack of standing. *Alabama* v. *FERC*, 3 Fed. Energy Guidelines ¶ 26,693 (CCH) (D.D.C. June 8, 1995). The UTM had noticed an appeal at the time of the execution of the proposed consent order.

In 1992, pursuant to the remand provision of the 1988 RO, the OGC issued a Revised Proposed Remedial Order (RPRO), specifying an alternate liability of $254 million, plus interest, on the ground that the reporting of the transactions, except those in January 1981, violated the entitlements reporting requirements. The firm filed objections to the RPRO with the OHA, which were ready for oral argument at the time of execution of the consent order. *OXY USA, Inc.*, Case No. LRO–0003 (dismissed August 30, 1995).

B. The Occidental Consent Order

On June 27, 1995, the DOE issued the consent order in proposed form. The DOE published notice of the proposed consent order and of the opportunity to file

[1] Occidental's wholly-owned subsidiary OXY USA, Inc. (OXY) was formerly Cities Service Oil and Gas Corporation, which in turn was a successor in interest to Cities. Unless otherwise indicated, the firms collectively are referred to as Occidental.

comments. See 60 FR 35186 (July 6, 1995). Following the comment period, the DOE issued the proposed consent order as a final order, pursuant to 10 C.F.R. 205.199J. The DOE then published notice of the final consent order. See 60 FR 43130 (August 18, 1995).

The Consent Order requires that Occidental remit a total of $275 million to the DOE. The Consent Order requires an initial payment of $100 million and then five annual payments of $35 million plus accrued interest. On September 15, 1995, Occidental remitted its initial $100 million payment. On September 18, 1995, the OGC filed the Petition for Implementation of Special Refund Procedures.

C. The Petition for Implementation of Special Refund Procedures

The OGC filed its Petition pursuant to 10 C.F.R. Part 205, Subpart V. In the Petition, the OGC requests that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations which were resolved by the Consent Order.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501 *et seq.; see also Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

III. The DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases

In July 1986, the DOE issued its Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 Fed. Reg. 27899 (August 4, 1986). The MSRP was issued in conjunction with the Stripper Well Settlement Agreement. *See In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan. 1986). Under the MSRP, up to 20 percent of crude oil overcharge funds may be reserved for direct restitution to injured purchasers, with the remainder divided equally between the states and the federal government. Any funds remaining after all valid claims by injured purchasers are paid are disbursed to the states and the federal government in equal amounts.

In August 1986, shortly after the issuance of the MSRP, the OHA issued an Order that announced that the MSRP would be applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. See 52 Fed. Reg. 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil funds under the Subpart V regulations. A crude oil refund applicant was only required to submit one application for its share of crude oil overcharge funds.

Consistent with the foregoing, the OHA accepted refund applications from 1987 until the June 30, 1995 deadline. See 60 Fed. Reg. 19914 (April 20, 1995). Applicants who filed before the deadline and whose applications are approved will share in the crude oil overcharge funds. Approved applicants are currently receiving $.0016 per gallon of purchased refined product.

IV. The Proposed Decision and Order

The Proposed Decision and Order tentatively determined that the consent order funds should be distributed pursuant to the MSRP, because the consent order funds were crude oil overcharge funds and, therefore, governed by the MSRP. The Proposed Decision and Order tentatively determined that the consent order funds were crude oil funds because the consent order settled specific crude oil overcharge proceedings and because the consent order and notice thereof indicated that the settlement amount was specifically related to the settled proceedings.

Based on the foregoing, the Proposed Decision and Order tentatively determined that 20 percent of the funds should be reserved for direct restitution through the OHA's Subpart V process and the remaining 80 percent should be divided equally between the states and the federal government.

V. Comments Received

The UTM filed comments in opposition to the proposed distribution. Although the UTM do not challenge our tentative determination that the Occidental consent order funds are crude oil overcharge funds, the UTM oppose the 20–40–40 distribution provided for in the MSRP and our Proposed Decision and Order.

The UTM contend that 100 percent of the Occidental consent order funds should be reserved for Subpart V claimants. Under this theory, neither the states nor the federal government would receive a share of the consent order funds. Alternatively, the UTM contend that 60 percent of the Occidental consent order funds should be reserved for Subpart V claimants: the 20 percent ordinarily reserved for such claimants, as well as the federal government's 40 percent share.

Two groups of states also filed comments. Both groups oppose the UTM's request and, instead, support adoption of the procedures set forth in the Proposed Decision and Order.

VI. Analysis

A. The UTM's Contention that Subpart V Claimants are Entitled to 100 Percent of the Occidental Consent Order Funds

The UTM's contention that Subpart V claimants are entitled to 100 percent of the Occidental consent order funds is based on their contention that Subpart V claimants are entitled to more than 20 percent of all crude oil overcharge funds. The UTM maintain that the OHA is required to reserve 31–32 percent of all crude oil overcharge funds for the Subpart V process in order to give Subpart V claimants ''full parity'' with entities that received a refund pursuant to the Stripper Well Settlement Agreement. Because the OHA has consistently reserved 20 percent for Subpart V claimants, the UTM contend that a reserve of 100 percent of the Occidental consent order funds for Subpart V claimants is necessary to make up for the alleged shortfall.

As indicated above, two groups of States oppose the UTM's contention. The States argue that the UTM's contention is inconsistent with the express terms of the Stripper Well Settlement Agreement and the DOE's MSRP. The States note that the UTM's claimed right to ''full parity'' is currently the subject of a pending court proceeding against the DOE. The States contend that the issue should be resolved in that forum. In the meantime, the States contend, in the absence of a court order to the contrary, the DOE should continue to distribute crude oil overcharge funds in the manner specified in the Stripper Well Settlement Agreement and the MSRP.

We agree with the States' position. The UTM do not dispute that the DOE's distribution of crude oil overcharge funds, including the distribution to Subpart V claimants, is governed by the Stripper Well Settlement Agreement. The UTM also do not dispute that a provision in the agreement provides that the reserve for Subpart V claimants ''shall not exceed 20 percent'' of the crude oil overcharge funds at issue.[2] The DOE, like the other signatories to the Stripper Well Settlement Agreement, is bound by its terms. The DOE incorporated this limitation in its MSRP and has uniformly applied it. Accordingly, the maximum that the DOE may reserve for Subpart V claimants is 20 percent of crude oil overcharge funds.

B. The UTM's Contention that Subpart V Claimants are Entitled to 60 Percent of the Occidental Consent Order Funds

In support of their alternative contention that 60 percent of the Occidental consent order funds should be reserved for Subpart V claimants, the UTM argue that Subpart V claimants are entitled not only to their maximum 20 percent but also to the federal government share. The UTM alleged that the DOE, FERC and the Department of Justice took actions which undermined the success of the Occidental enforcement proceeding. Based on this allegation, the UTM contend that the federal government should forfeit its share.

As indicated above, the distribution of crude oil overcharge funds is governed by the Stripper Well Settlement Agreement, which provides for a maximum reserve of 20 percent for Subpart V claimants. Moreover, the UTM's claimed entitlement is inconsistent with the Economic Stabilization Act of 1970 (formerly 12 U.S.C. § 1094 note), which provided separate statutory authority for public (Section 209) and private (Section 210) enforcement actions. The courts have consistently held that a private party's interest in some ultimate restitutionary benefit does not confer a legal right to intervene in a Section 209 public proceeding. See, *e.g., Alabama* v. *FERC,* 3 Fed. Energy

[2] See Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines (CCH) ¶ 90,509 at 90,655 (Part IV.B.6) (''IV. Other Alleged Crude Oil Violation Proceedings,'' ''B. Pending and Future Proceedings,'' ''6. Future Subpart V Proceedings.'')

Guidelines ¶26,693 (D.D.C. June 8, 1995). In fact, in the case just cited, the UTM had attempted to appeal the 1993 Order that FERC issued to Occidental; the federal district court granted the DOE's motion to dismiss for lack of standing. Accordingly, the UTM, having declined to pursue their own private action pursuant to Section 210, have no right to complain about the government's enforcement efforts, let alone seek the federal government's share of the funds resulting from those efforts.

VII. Final Refund Procedures

Because we have determined that 100 percent of the consent order funds are crude oil funds, the funds will be distributed according to the Stripper Well Settlement Agreement and the MSRP. We have reserved the full 20 percent ($55 million), plus accrued interest, for direct restitution to injured purchasers of crude oil and refined petroleum products. The remaining 80 percent ($220 million) will be distributed in equal shares to the states and the federal government.

As indicated above, the funds reserved for direct restitution to injured purchasers will be available for distribution through OHA's Subpart V crude oil overcharge refund proceeding. We have previously discussed the application requirements and standards that apply in that proceeding. Because the deadline for the filing of applications has now passed, we do not believe that it is necessary to reiterate those matters. In accordance with the MSRP, any funds remaining after the conclusion of the Subpart V crude oil overcharge refund proceeding will be distributed to the states and the federal government in equal shares.

With respect to the funds made available to the states for indirect restitution, we note that the share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

Based on the foregoing, we have determined that the $100 million initial payment made by Occidental be distributed as follows: $20 million, plus accrued interest, to the DOE interest-bearing escrow account for crude oil claimants, $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the states, and $40 million, plus accrued interest, to the DOE interest-bearing escrow account for the federal government. We have further determined that, upon remittance to the DOE, Occidental's subsequent five annual payments of $35 million, plus accrued interest, be distributed to the same accounts in the same proportions.

It is therefore ordered that:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the consent order funds remitted by Occidental Petroleum Corporation, plus accrued interest, pursuant to Paragraphs (2), (3), (4), and (5) of this Decision and Order.

(2) The Director of Special Accounts and Payroll shall transfer $40 million, plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-States,'' Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $40 million, plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Federal,'' Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $20 million, plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Claimants 4,'' Number 999DOE010Z.

(5) Upon each future receipt of funds referenced in Paragraph (1) above, the Director of Special Accounts and Payroll shall transfer 40 percent, plus any accrued interest, to each of the subaccounts specified in Paragraphs (2) and (3) above, and 20 percent to the subaccount specified in Paragraph (4) above.

(6) This is a final Order of the Department of Energy.

Dated: January 31, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–3057 Filed 2–9–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities up for Renewal

[AMS–FRL–5420–8]

Selective Enforcement Auditing Reporting and Record keeping Requirements for On-Highway Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; Large Nonroad Compression Ignition Engines; and Nonroad Spark-ignition Engines at and Below 19 Kilowatts

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 12, 1996.

ADDRESSES: Engine Programs and Compliance Division, 401 M Street, SW (6403J), Washington, DC 20460. Interested persons may request a copy of the ICR, without charge, by writing, faxing, or phoning the contact person below.

FOR FURTHER INFORMATION CONTACT: Rick Gezelle, Office of Mobile Sources, Engine Programs and Compliance Division, (202) 233–9267, (202) 233–9596 (fax).

Affected Entities

Entities potentially affected by this action are manufacturers of on-highway light-duty vehicles, light-duty trucks, and heavy-duty engines; and manufacturers of small nonroad spark-ignition engines and large nonroad compression-ignition engines.

Title

Selective Enforcement Auditing Reporting and Record keeping Requirements for On-Highway Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; Large Nonroad Compression Ignition Engines; and Small Nonroad Spark-ignition Engines. (OMB #: 2060–0064, approved through 3/31/96).

Abstract

Manufacturers of on-highway light-duty vehicles (LDVs), light-duty trucks (LDTs), and heavy-duty engines (HDEs); and manufacturers of small nonroad spark-ignition engines (SIEs) and large nonroad compression-ignition engines (CIEs) will report and keep records of production information, Selective Enforcement Audit information, test data, audit reports, and laboratory information. Manufacturers will submit production reports at the beginning of each model year, voluntarily submit production line test data acquired from a manufacturer's own testing program, and submit audit information at the conclusion of a Selective enforcement Audit. EPA will use this information to plan audits and to verify that production line engines are in compliance with emission standards.

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.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

BURDEN STATEMENT

	Estimated avg. burden hours	Estimated avg. cost/response	Estimated avg. frequency	Estimated avg. No. of respondents
A. Assembly Line Test Reports:				
1. LDVs & LDTs	24	$1,440	4	18
2. On-Highway HDEs	18	1,080	4	13
3. Large NR CIEs	15	900	4	20
4. Small NR SIEs	15	900	4	20
B. Projected Sales Data:				
1. LDVs and LDTs	(1)	(1)	(1)	(1)
2. On-Highway HDEs	6	$360	1	22
3. Large NR CIEs	8	480	1	20
4. Small NR SIEs	8	480	1	20
C. Selective Enforcement Audits:				
1. LDVs and LDTs	80	$4,800	1	6
2. On-Highway HDEs	640	38,400	1.25	8
3. Large NR CIEs	640	38,400	1	10
4. Small NR SIEs	640	38,400	1	10

[1] Not Applicable.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 14, 1995.

Donald E. Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 96–3025 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5420–6]

Access to Confidential Business Information By Booz-Allen, & Hamilton, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton, Inc. to participate in reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data five working days from the date of this notice.

ADDRESSES: Send or deliver, written comments to Veronica Kuczynski, U.S. Environmental Protection Agency, Office of the Comptroller (3PM30), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Veronica Kuczynski, Office of the Comptroller, (3PM30), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone (215) 597–9955.

SUPPLEMENTARY INFORMATION: Under Contract 68–W4–0010, Work Assignment #ESS026, Booz-Allen, & Hamilton, Inc. will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the State of Pennsylvania. This review involves conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of timesheets to expense reports.

(2) Financial Reports: review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Record Keeping Procedures: review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: January 31, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–3027 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5420–4]

Governmental Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the fourth meeting of the Governmental Advisory Committee (GAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (NACEC).

The Committee was established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the NACEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation''. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 10 independent representatives drawn from state and local government agencies and tribal governments.

DATES: The Committee will meet on March 11, 1996 from 8:30 a.m. to 4:30 p.m. and March 12, 1996 from 8:00 a.m. to 2:00 p.m.

ADDRESSES: The Embassy Row Hotel, 2015 Massachusetts Avenue, Washington, DC 20036. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: February 1, 1996.

Robert Hardaker,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 96–3028 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5420–3]

National Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the fourth meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (NACEC).

The Committee was established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the NACEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation''. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 14 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on March 11, 1996 from 8:30 a.m. to 4:30 p.m. and March 12, 1996 from 8:00 a.m. to 2:00 p.m.

ADDRESSES: The Embassy Row Hotel, 2015 Massachusetts Avenue, Washington, DC 20036. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Lena Nirk, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–8169.

Dated: February 1, 1996.

Lena Nirk,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 96–3029 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1094–DR]

Maryland; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1094–DR), dated January 23, 1996, and related determinations.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland, is hereby amended to include Public Assistance and Hazard Mitigation for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1996:

Allegany, Cecil, Frederick, Garrett, and Washington for Public Assistance and Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3034 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1095–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New

York, (FEMA–1095–DR), dated January 24, 1996, and related determinations.

EFFECTIVE DATE: February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 24, 1996:

Columbia County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3035 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1097–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1097–DR), dated January 27, 1966, and related determinations.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

The counties of Belmont, Columbiana, Jefferson, Lawrence, Meigs, Monroe, and Washington for Public Assistance (already designated for Individual Assistance and Hazard Mitigation Assistance).

The county of Scioto for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3036 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1097–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1097–DR), dated January 27, 1996, and related determinations.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

The counties of Clermont, Hamilton and Lawrence for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3037 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1097–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1097–DR), dated January 27, 1966, and related determinations.

EFFECTIVE DATE: February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

The county of Scioto for Hazard Mitigation Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3038 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1098–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1098–DR), dated January 27, 1996, and related determinations.

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 27, 1996:

The counties of Augusta, Clarke, Frederick, Loudoun, Page, Rockbridge, and Rockingham and the independent cities of Buena Vista, Covington and Waynesboro for Individual Assistance and Hazard Mitigation Assistance.

The counties of Alleghany, Bath, Botetourt, Shenandoah, and Warren for Hazard Mitigation Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–3039 Filed 2–9–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each

agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011479–002
Title: Serpac Service Agreement
Parties:
Compania Sudamericana de Vapores, S.A.
Flota Mercante Grancolombiana, S.A.
Columbus Line
Synopsis: The proposed amendment adds a new Article 13.4 to provide for a party's right to obtain any prejudgment remedy against another party to which it is entitled.

Agreement No.: 203–011401–001
Title: TMM/H–L Space Charter and Sailing Agreement
Parties:
Transportacion Maritima Mexicana, S.A. de C.V.
Hapag-Lloyd Aktiengesellschaft
Synopsis: The proposed amendment deletes inland European points, deletes the authority for the parties to discuss rates outside of the Conference and makes other non-substantive changes. It also restates the Agreement.

Agreement No.: 224–200865–002
Title: Port of Oakland/Hanjin Shipping Company Ltd. Terminal Agreement
Parties:
Port of Oakland (''Port'')
Hanjin Shipping Company, Ltd. (''Hanjin'')
Synopsis: The proposed amendment permits the Port to assign certain marine terminal facilities at the Port's Seventh Street Marine Terminal to Hanjin. It also provides for an initial fixed wharfage rate of ninety-two dollars and fifty-three cents per TEU, subject to volume discounts, future increases and a minimum annual volume of 70,000 TEUs.

Dated: February 6, 1996.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–2945 Filed 2–9–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Seiwa America, Inc., 5500 Frantz Road, Suite 117, Dublin, OH 43017, Officers: Kazunari Tada, President, Seigo Iwafune, Exec. Vice President

Trex Corporation, 8353 N.W. 68 Street, Miami, FL 33166, Officers: Jorge M. Mundo, President, Walter G. Clerke. Vice President

US Western Forwarders, 6916 Claire Avenue, Reseda, CA 91335, Fleur Meter Ariano, Sole Proprietor

Dated: February 7, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–3033 Filed 2–9–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Connecticut Bankshares, MHC, 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 March 7, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Connecticut Bankshares, MHC, Manchester, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Savings Bank of Manchester, Manchester, Connecticut.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Community Bankshares, Inc., Orangeburg, South Carolina; to acquire 100 percent of the voting shares of Sumter National Bank, Sumter, South Carolina (an organizing bank).

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Westside Financial Corporation, Kennesaw, Georgia; to merge with Eastside Holding Corporation, Snellville, Georgia, and thereby indirectly acquire The Eastside Bank & Trust Company, Snellville, Georgia.

2. Wilson Bank Holding Company, Lebanon, Tennessee; to acquire 50 percent of the voting shares of DeKalb Community Bank (formerly named DeKalb Bank & Trust), Smithville, Tennessee (in organization). Comments regarding this application must be received not later than February 26, 1996.

Board of Governors of the Federal Reserve System, February 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-2933 Filed 2-9-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Plan for the Child Care and Development Block Grant.

OMB No.: 0970–0114.

Description: This legislatively-mandated plan serves as the agreement between the grantee and the Federal government as to how CCDBG programs will be operated.

Respondents: State, Local and Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	282	1	40	12,972

Estimated Total Annual Burden Hours: 12,972.

Additional Information: ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by 3/15/96.

Copies of the proposed collection can be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: Consideration will be given to comments and suggestions received by March 15, 1996. Written comments and recommendation for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: February 5, 1996.

Roberta Katson,

Director, Office of Information Resources Management Services.

[FR Doc. 96–2978 Filed 2–9–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information collection Activity; Comment Request

Proposed Project(s):

Title: Plan for the Child Care and Development Block Grant.

OMB No.: 0970–0114.

Description: This legislatively-mandated plan serves as the agreement between the grantee and the Federal government as to how CCDBG programs will be operated. The plans provide assurances that the funds will be administered in conformance with the legislative requirements, pertinent Federal Regulations, and other applicable instructions or guidelines issued by ACF.

Respondents: State governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	282	.5	40	5,640
Amendment	282	1	3	1,692

Estimated Total Annual Burden Hours: 6,486.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described below. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance officer. All requests should be identified by title.

In addition, requests of copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. electronic comments must be submitted as an ASCII file without special characters or encryption.

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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 6, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–3053 Filed 2–9–96; 8:45 am]

BILLING CODE 4184–01–M

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection:

Title of Information Collection: Information Collection Requirements Contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor;

Form No.: HCFA–R–142;

Use: BPD–393 contains information collection requirements for hospitals that would seek to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. HCFA will use this information to help assure compliance with this mandate. This information is not contained elsewhere in regulations.

Frequency: On occasion;

Affected Public: Individuals or households, not-for-profit institutions, Federal Government, and State, local or tribal government;

Number of Respondents: 7,000;

Total Annual Responses: 7,000;

Total Annual Hours Requested: 8,818,577.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 25, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–2958 Filed 2–9–96; 8:45 am]

BILLING CODE 4120–03–P

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of previously approved collection for which approval has expired;

Title of Information Collection: Hospice Core Service: Nursing Information Collection;

Form No.: HCFA–R–66;

Use: Hospices applying for a waiver to the nursing core services requirements must submit documentation to HCFA supporting their request.

Frequency: Other, one time only;

Affected Public: Business or other for-profits and Not-for-profit institutes;

Number of Respondents: 1;

Total Annual Responses: 1;

Total Annual Hours Requested: 1.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 2, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–2957 Filed 2–9–96; 8:45 am]

BILLING CODE 4120–03–P

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Home Office Cost Statement;

Form No.: HCFA 287;

Use: Medicare law permits components of chain organizations to be reimbursed for certain costs incurred by the Home Offices of the chain. The Home Office Cost Statement is required by the fiscal intermediary to verify Home Office Costs claimed by the components.

Frequency: Annually;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 1,231;

Total Annual Responses: 1,231;

Total Annual Hours Requested: 573,646.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 5, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–2955 Filed 2–9–96; 8:45 am]

BILLING CODE 4120–03–P

Submitted for Collection of Public Comment: Submission for OMB Review

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired;

Title of Information Collection: State Medicaid Eligibility Quality Control Sampling Plan;

Form No.: HCFA–317;

Use: The State MEQC sampling plan is necessary for HCFA to monitor the States' operation of the MEQC system. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claims collection procedures;

Frequency: Annually;

Affected Public: State, local, or tribal government;

Number of Respondents: 55;

Total Annual Responses: 110;

Total Annual Hours: 2,640.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 5, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–2956 Filed 2–9–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Robert Benson, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext. 267; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Attenuated Human Rotavirus Vaccine

Hoshino, Y., Kapikian, A.Z., and Chanock, R.M. (NIAID)
Filed 11 July 95 (priority to 11 Jul 94)
Serial No. 08/500,564 (CIP of 08/481,644)

Rotaviruses are recognized as the single most important etiologic agent of severe diarrhea in both developed and nondeveloped countries. This invention embodies an attenuated rotavirus as a vaccine. The claims of the invention relate to the generation of a cold-adapted virus that is not efficient in replication at normal human body temperatures and therefore may be capable of stimulating an immune response without causing illness. In a limited clinical trial, administration of a cold-adapted rotavirus vaccine to 26 adults demonstrated that the vaccine was safe, attenuated, and was capable of inducing a virus-specific serologic response. This invention has been PCT filed on July 11, 1995. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Method for Generating Influenza A Viruses Bearing Attenuating Mutations in Internal Protein Genes

Murphy, B., Subbarao, K.E., Kawaoka, Y. (NIAID)
Filed 7 Jun 95
Serial No. 08/481,631 (CIP of 08/309,521, CIP of 08/123,933)

This invention describes a method of producing attenuated Influenza A strains for use as live Influenza A virus vaccine candidates. This method involves the introduction of three temperature-sensitive attenuating mutations into the polymerase basic protein 2 (PB2) gene of Influenza A virus. These mutations are introduced by site-directed mutagenesis at specific sites into a cDNA copy of the PB2 gene. An RNA transcript of this nutant PB2 gene is recovered into an infectious Influenza A virus using a host range restricted helper virus. This attending mutant PB2 gene can be transferred to each new variant of Influenza A virus as it appears in nature. The patent application covering this invention is available for licensing and contains claims to: The methods of producing the attenuated strains; the attenuated strains produced by the methods; and methods of vaccination using the attenuated strains. Viruses containing mutant PB2 genes are also available for licensing. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Attenuated Influenza A Virus

Palese, P., Muster, T., Murphy, B.R., Enami, M., Bergmann, M., Subbaro, E.K., Chanock, R.M. (NIAID)
Filed 7 Jun 95 (priority to 3 Feb 92)
Serial No. 08/480,939 (FWC of 07/939,716)

This invention describes the development of a novel live attenuated influenza A virus for use in intranasal vaccines. This virus is unique in that it is a chimera of two influenza strains. This results in an attenuated virus capable of invoking an immune response and therefore protection against influenza. The claims of this invention cover a method for generating the attenuated influenza virus, introducing the viral construct into cell lines, and vaccinating a vertebrate with the attenated virus. Animal studies have demonstrated that infection with the chimeric virus leads to resistance to a challenge with wild-type virus. (portfolio: Infectious Diseases—Vaccines, viral, non-AIDS)

Pteridine Nucleotide Analogs as Fluorescent DNA Probes

Hawkins, M.E., Pfleiderer, W., Davis, M.D., Balis, F.M. (NCI)

Filed 26 May 95
Serial No. 08/451,641 (DIV of 08/245,923)

The invention concerns a series of pteridine deoxyribonucleotide analogs which are highly fluorescent and resemble purine nucleotides in chemical structure and properties. The phosphoramidite form of these fluorophores can be site-specifically incorporated into oligonucleotides using conventional DNA synthesis techniques. The fluorescence intensity of the pteridine nucleotide analogs is highly dependent on their physicochemical environment, thus making them ideal for the study of DNA-protein interactions. A real-time assay for HIV integrase has been developed using one of the pteridine nucleotide analogs that resembles guanosine. Other uses foreseen are as fluorescent labels for DNA probes and PCR primers and for investigating protein-DNA interactions. The claims include the phosphoramidite derivatives of the pteridine nucleotide analogs useful as starting materials for oligonucleotide synthesis and oligonucleotides incorporating the pteridine nucleotide analogs. (portfolio: Gene-Based Therapies—Research Tools and Reagents; Gene-Based Therapies—Diagnostics)

Dated: February 1, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–3073 Filed 2–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Tuberculosis Academic Award Applications.

Date: March 5, 1996.

Time: 9:00 a.m.

Place: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 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.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 6, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–3071 Filed 2–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; 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:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Date: March 7–8, 1996.

Time: 5 p.m.–adjournment on March 8.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Ned Feder, Ph.D., Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Date: February 29–March 1, 1996.

Time: 8:30 a.m.–adjournment.

Place: Stouffer Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC 20036.

Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Date: March 1, 1996.

Time: 8 a.m.–adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–43G, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8891.

Purpose/Agenda: To review and evaluate research grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 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.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 6, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–3072 Filed 2–9–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Cartilage-Derived Morphogenetic Proteins

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Public Health Service Employee Invention Report Number E–138–94/0 (PCT/US94/12814), entitled ''Cartilage-Derived Morphogenetic Proteins'' to Creative BioMolecules, Inc., having a place of business in Hopkinton, Massachusetts. The patent rights in this application have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention relates generally to the field of cartilage and bone development. More specifically, this invention relates to cartilage-derived morphogenetic proteins (CDMPs) that stimulate development and repair of cartilage *in vivo.* These proteins which exhibit chondrogenic properties are disclosed to be members of the TGF–B superfamily. Also disclosed are polynucleotides encoding two members of the CDMP family of proteins. Recombinant CDMP–1 protein was shown to have chondrogentic activity *in vivo.* The primary uses of this invention would be in orthopaedic reconstruction.

ADDRESSES: Requests for a copy of this patent application, inquires, comments, and other materials relating to the contemplated license should be directed to: John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7735 extension 285; Fax: 301/402–0220. A signed Confidentiality Agreement will be required to review copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 12, 1996 will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 1, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–3074 Filed 2–9–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–21901–05]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon Limited for approximately 3,794 acres. The lands involved are in the vicinity of Eagle, Alaska, located within T. 2 N., R. 27 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 13, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 96–3001 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–JA–P

[OR–050–1220–00:G6–0058]

Prineville District; Closure of Public Lands; Oregon

January 31, 1996.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the area immediately surrounding Paulina Cave, Crook County, Oregon, is closed to all visitor use.

Paulina Cave in Crook County, Oregon, and the surrounding area extending 150 feet from the rim of the sinkhole, are closed to all visitor use. The purpose of this closure is to protect the western big-eared bat (Plecotus townsendii) from human disturbance. This species is extremely sensitive to human disturbance; any disturbance that awakens the bats during hibernation may be sufficient to result in their death. Paulina Cave is a historical hibernaculum for the western big-eared bat. Human disturbance above the cave and surrounding the sinkhole creates significant noise and vibration to disturb roosting western big-eared bats. Human disturbance and visitation at the site would be sufficient to preclude attempts to re-establish use by the western big-eared bat at this site. Exemptions to this closure will apply to administrative personnel for monitoring purposes; other exemptions to this restriction may be made on a case-by-case basis by the authorized officer. Exemptions could include approved research, essential search and rescue, and other emergency actions or administrative operations for cave resources protection. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

A more specific location of public lands under this closure order is not provided in order to protect sensitive cave resources. Cave locations are exempt from the Freedom of Information Act under the Federal Cave Resources Protection Act of 1988.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District, P.O. Box 550, Prineville Oregon 97754, telephone (541) 416–6700.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: January 31, 1996.

Don Smith,

Acting District Manager, Prineville District Office.

[FR Doc. 96–2954 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–33–M

[D–930–1020–01]

Notice of Intent (NOI) To Modify Land Use Plans (LUPS) and To Prepare an Environmental Impact Statement (EIS) or Other National Environmental Policy Act (NEPA) Documentation To Adopt Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Revised notice of intent to modify Land Use Plans and to prepare appropriate NEPA documentation to adopt Standards for Rangeland Health and Guidelines for Grazing Management in Idaho.

SUMMARY: The Bureau of Land Management (BLM) in Idaho published an NOI on page 58092 in the issue of Friday, November 24, 1995, to, among other actions, (1) modify all Idaho Management Framework Plans (MFPs) and Resource Management Plans (RMPs) and (2) prepare an EIS to adopt standards for rangeland health and guidelines for grazing management in Idaho. It is now necessary to revise that NOI in order to clarify the preliminary alternatives identified and to extend the public comment period on the NOI and the Planning Criteria which were published in a notice of availability (NOA) on page 65352 in the issue of Friday, December 19, 1995.

DATES: Comments on the NOI of November 24, 1995, on the NOA of December 19, 1995, and this NOI will be accepted for 30 days from the publication date of this NOI.

FOR FURTHER INFORMATION CONTACT: J. David Brunner, Bureau of Land

Management, 3380 Americana Terrace, Boise, Idaho 83706; Phone 208–384–3056.

SUPPLEMENTARY INFORMATION: The three preliminary alternatives identified in the Notice of Intent of November 24, 1995, were: (1) The continuation of current management (no action alternative) as provided for in existing land use plans, (2) application of the fall back standards and guidelines contained in the regulations, and (3) the adoption of standards and guidelines developed locally and in consultation with Idaho BLM's three Resource Advisory Councils. The three preliminary alternatives identified above to modify land use plans in Idaho are amended as follows: (1) Adoption of new Standards and Guidelines specific to Idaho and developed in consultation with Idaho BLM's three Resource Advisory Councils, and (2) adoption of the Fall back Standards and Guidelines specified in the new grazing regulations. These preliminary alternatives are subject to change pending analysis of comments at the conclusion of scoping. Any changes will be reflected in the NEPA document.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 96–2932 Filed 2–9–96; 8:45 am]

BILLING CODE 1020–GG–M

National Park Service

60 Day Notice of Intention to Request Clearance of Information Collection, Opportunity for Public Comment

AGENCY: National Park Service, The Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C., Chapter 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection request (ICR). Comments are invited on: (1) the need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose of the ICR is to nominate properties for listing in the National Register of Historic Places, the official list of the Nation's cultural resources worthy of preservation, which public law requires that the Secretary of the Interior maintain and expand. Properties are listed in the National Register upon nomination by State Historic Preservation Officers and Federal Preservation Officers. Law also requires Federal agencies to request determinations of eligibility for property under their jurisdiction or affected by their programs or projects. The forms provide the historic documentation on which decisions for listing and eligibility are based.

DATES: Public comments will be accepted for sixty days from the date listed at the top of this page in the Federal Register.

ADDRESSES: Send comments to Carol Shull, Keeper of the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Copies of the proposed ICR requirement can be obtained from Carol Shull, Keeper of the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

For further information, contact Carol Shull, (202) 343–9500.

SUPPLEMENTARY INFORMATION:

Title: National Register of Historic Places Registration Form, National Register of Historic Places Continuation Sheet, and National Register of Historic Places Multiple Property Documentation Form.

Form: NPS 10–900, -a, -b.

OMB Number: NPS 1024–0018.

Expiration Date: March 31, 1996.

Type of Request: Extension of the expiration date.

Description of need: The National Historic Preservation Act requires the Secretary of the Interior to maintain and expand the National Register of Historic Places, and to establish criteria and guidelines for including properties in the National Register. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation. National Register properties must be considered in the planning for Federal or federally assisted projects. National Register listing is required for eligibility for the federal rehabilitation tax incentives.

Description of respondents: The affected public are State, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals. Nominations to the National Register of Historic Places are voluntary.

Estimated annual reporting burden: 36,000 hours.

Estimated average burden hours per response: 18 hours.

Estimated average number of respondents: 1000.

Estimated frequency of response: 2000 annually.

Dated: February 6, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Management Services Division, National Park Service.

[FR Doc. 96–3059 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Deer Management Plan and Environmental Assessment; Fire Island National Seashore, NY

ACTION: Notice of intent.

SUMMARY: The National Seashore, working cooperatively with the public and with other agencies, had begun a process to develop three separate deer management plans tailored to unique problems and needs at each of three sites: the William Floyd Estate in Mastic Beach, the Wilderness Area of Fire Island National Seashore (from Smith Point west to Watch Hill), and the western end of the Seashore (from Watch Hill to the Fire Island Lighthouse). The management planning process involved the formation of task groups and included public scoping meetings. This process would have culminated with a National Environmental Policy Act (NEPA), Environmental Assessment.

Based on the results of the first five scoping meetings and the controversies that were apparent in the meetings, the National Park Service, Fire Island National Seashore has decided to dismiss the task groups, bypass the Environmental Assessment process, and go directly to a NEPA, Environmental Impact Statement (EIS) process.

Further scoping meetings, for the same three areas, are being planned. The Seashore will continue to invite participants from the past task groups, and are hereby inviting all other

interested parties, to all future scoping meetings. Please be advised that these future meetings will be announced through the local media.

ADDRESSES: Inquiries on future meeting dates should be submitted to the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772, telephone (516) 289–4810.

SUPPLEMENTARY INFORMATION: As at many locations in the Northeast, increasing populations of white-tailed deer are causing concern about impacts to the natural resource values of the Seashore as well as the various kinds of impacts within the communities that are integral with Seashore property. To devise the safest, most practical, and least disruptive plans, the Seashore is seeking the input of all parties affected by the issue, such as the residents of Fire Island and Mastic Beach communities and managers of public lands also bordering the Seashore. For example, both the Robert Moses State Park and the Smith Point County Park (both located on Fire Island) have been asked to participate in the planning process.

The focus of each of the public scoping meetings will be to discuss NPS and other local issues pertaining to deer in each of the three management areas; to begin to define the problems, and to set management planning objectives. When the issues and objectives have been delineated, the next step is development of management alternatives for resolving the issues and meeting objectives.

The NEPA EIS document will describe each management alternative (as developed through the scoping meetings), state the Seashore's preferred alternative and analyze the impacts of each alternative. This document, as a Draft EIS, will be made available for public review by subsequent notice in the Federal Register, and through the local media.

Members of the National Seashore's staff will participate in all the scoping meetings to answer questions specific to white-tailed deer, park operational issues related to deer, park management objectives, alternative development or any other aspect of the deer management planning process.

For further information, please contact the superintendent at 516–289–4810 or by writing to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772.

Jack Hauptman,

Superintendent.

[FR Doc. 96–2953 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0095), Washington, DC, 20503, telephone 202–395–7340.

Title: Initial Regulatory Program; 30 CFR Part 710.

OMB Approval Number: 1029–0095.

Abstract: Information collected in Part 710 is used to ensure States are conducting minesite inspections under the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected is also used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA, and to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities and surface coal mining operators.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: John A. Trelease (202) 208–2617.

Dated: December 7, 1995.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–2925 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the Provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0027), Washington, D.C. 20503, telephone 202–395–7340.

Title: General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands—30 CFR Part 740

OMB Approval Number: 1029–0027.

Abstract: Section 522 of the Surface Mining Control and Reclamation Act of 1977 (Act) requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority in determining the eligibility of the applicant and compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators and State regulatory authorities.

Estimated completion time: 21 hours.

Annual Responses: 30.

Annual Burden Hours: 643.

Bureau Clearance Officer: John A. Trelease (202) 208–2617.

Dated: December 7, 1995.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–2924 Filed 2–9–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Public Information Collections being Reviewed by the Agency for International Development; Comments Requested

SUMMARY: Agency for Intenrational Development (AID), is making efforts to reduce the paperwork burden. AID 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 for 1995. Comments are requested concerning: (a) whether the proposed or continuing

collections 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 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: Send comments on these information collection on or before April 12, 1996.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Ball, Bureau for Management, Office of Administrative Services, Information Support Services Division, Agency for Intenrational Development, Room B930, N.S., Washington, D.C., (202) 736–4743 or via e-mail MABall@USAID.GOV

SUPPLEMENTARY INFORMATION:

Title: A.I.D. Consultant Registry Information System (ACRIS) Instruction Books for the Organization Profile.

Form No.: AID 1420–50 (12/95).

OMB NO: OMB 0412–0506.

Type of Review: Extension of Information Collection.

Abstract: A.I.D. procuring activities are required to establish bidders mailing lists ''to assure access to sources and to obtain meaningful competition'' (CFR 1–2.205). In compliance with this requirement, A.I.D.'s Office of Small and Disadvantaged Business Utilization/ Minority Resource Center has responsibility for ''developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the A.I.D. procuring activities.'' (AID 7.704–29(b)(4)).

Respondents: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 1,000.

Estimated Total Annual Hour Burden on Respndents: 1,000 hours.

Dated: February 5, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 96–2931 Filed 2–9–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies; Novel Reactor Design Joint Venture

Notice is hereby given that, on December 19, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the Center for Waste Reduction Technologies, for itself and for the participants in the Novel Reactor Design project, (hereinafter ''Novel Reactor Design Joint Venture'') filed a written notification simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties participating in the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Center for Waste Reduction Technologies, New York, NY; American Institute of Chemical Engineers, New York, NY; Air Products and Chemicals, Inc., Allentown, PA; Eastman Chemical Company, Batesville, AK; Monsanto Company, St. Louis, MO; Olin Corporation, Lake Charles, LA; Rhone Poulenc Inc., Monmouth Junction, NJ; SRI International, Menlo Park, CA; and U.S. Department of Energy, Washington, DC.

The nature and objectives of this joint venture are to conduct an experimental demonstration to confirm the operational utility and advantages of the basic concept for a novel reactor design for complex, exothermic reactions, such as oxidations or sulfonations, in such a way that yields are maximized and by-product formation and waste generation are minimized.

Participation in this joint venture will remain open to qualified persons and organizations. Information regarding participation in this joint venture may be obtained from: Center for Waste Reduction Technologies, 345 East 47th Street, New York, NY 10017–2395.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–3010 Filed 2–9–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on November 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: StrataCom, Inc., San Jose, CA is a Corporate Member. Euristix Ltd., Dublin, IRELAND; ITEC Solutions, Inc., Ottawa, Ontario, CANADA; National Computing Centre Limited, Manchester, ENGLAND; and Teleglobe Canada Inc., Montreal, Quebec, CANADA are Associate Members. GMD Fokus, Berlin, GERMANY; Hydro-Quebec, Montreal, Quebec, CANADA; Logica, London, UK; and SETA Corporation, McLean, VA are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 7, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on November 13, 1995 (60 FR 57022).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–3011 Filed 2–9–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1708–95]

RIN 1115–AE08

Notice of Policy Regarding Contracts Between the Immigration and Naturalization Service and Transportation Lines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces a change in the policy involving contracts with transportation lines that are entered into with the Immigration and Naturalization Service (''the Service'') under section 238 of the Immigration and Nationality Act (''the Act). Beginning March 13, 1996, the Service intends to evaluate a transportation line's fines, liquidated damages, and user fee payment record before entering into any agreements with the transportation line. The Service will also evaluate existing transportation line agreements for possible cancellation, if it is determined that fines, liquidated damages, or user fees imposed against or owed by the transportation line are not paid to the Service in a timely manner. This action is necessary to ensure timely payment of a transportation line's fines, liquidated damages, and user fees.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: This notice announces to all interested parties that in order to encourage the timely payment of fines, liquidated damages, and user fees, the Service intends to condition future agreements with transportation lines upon payment of overdue fines, liquidated damages, and user fees. The Service will also terminate existing agreements with transportation lines whose payments are outstanding for more than 30 days. Section 238 of the Act provides for those actions.

Delinquent carrier fines, liquidated damages, and user fee payments have made this policy a necessity. Service records reflect that over five million dollars of carrier fines, liquidated damages, and user fees are outstanding for more than 30 days. Existing administrative means to enforce collection of these monies are insufficient and have led to litigation. This policy will address the outstanding obligations of commercial transportation lines in a more timely and cost effective manner.

The Service intends to deny transportation line requests for the following contracts, based on an unacceptable fines, liquidated damages, or user fee payment record: (1) entry and inspection of aliens from foreign contiguous territory or adjacent islands agreements (Form I–420); (2) pre-clearance and pre-inspection agreements (Form I–425); (3) progressive clearance agreement requests; (4) Immediate and Continuous Transit agreements, also known as Transit Without Visa (TWOV) agreements (Form I–426); (5) In-Transit Lounge (ITL) agreements; and, (6) Visa Waiver Pilot Program (VWPP) agreements (Form I–775). An unacceptable fines payment record is one that includes fines or liquidated damages that are delinquent 30 days and have been affirmed by either a final decision or formal order. An unacceptable user fee payment record is one that includes user fees that are delinquent 30 days.

The Service also intends to evaluate existing carrier agreements for possible cancellation and will notify the affected carrier in writing of the proposed Service decision. The Service will allow the carrier 30 days to make full payment of the debt or to show cause why the debt is not valid. The Service will issue a final determination after the close of the 30 day period.

Dated: September 14, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–2926 Filed 2–9–96; 8:45 am]

BILLING CODE 4410–10–M

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:00 a.m., Tuesday, February 27, 1996.

PLACE: Old Town Holiday Inn, 480 King Street, Alexandria, VA.

STATUS: Open.

MATTERS TO BE CONSIDERED: Office of Justice Programs' update on the Violent Offender and Truth In Sentencing Grant Program, a Gains briefing, a plan for reimbursement for NIC services, matching NIC board expenses to reductions in the NIC budget, election of officers, report on the NIC FY 1996 appropriation and the expected future of NIC, and NIC's budget and funding.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 96–3062 Filed 2–9–96; 8:45 am]

BILLING CODE 4410–36––M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–1 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 1996 CARP arbitrator list.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for selection to a Copyright Arbitration Royalty Panel (CARP) during 1996. This CARP arbitrator list will be used to select the arbitrators who will serve on panels initiated in 1996 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Tanya M. Sandros, Copyright Arbitration Royalty Panel Specialist, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel (CARP) consisting of three arbitrators from ''lists provided by professional arbitration associations.'' See 17 U.S.C. 802(b). The Librarian of Congress selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third arbitrator to serve as chairperson of the panel. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

On December 7, 1994, the Copyright Office issued final regulations implementing the CARP selection process. 59 FR 63025 (December 7, 1994). Section 251.3(a) of the regulations allows any professional arbitration association or organization to nominate qualified individuals, as described in § 251.5, to serve as

arbitrators on a CARP. The regulations require that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant. 37 CFR 251.3(a).

Section 251.3(b) of the regulations requires the Copyright Office to publish a list of qualified persons and mandates that this list must include between 30 and 75 names of persons who were nominated from at least three arbitration associations. The newly comprised list of arbitrators is in effect until the end of the calendar year and any and all arbitrators selected for a CARP during the year would come from this list. The list includes the name of the nominee and the nominating association.

The publication of today's list satisfies the requirement of 37 CFR 251.3. The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. Thus, for example, if the Librarian is required to convene a CARP in 1996 for a royalty fee distribution, parties to that proceeding may review that information as a means of formulating objections to listed arbitrators under § 251.4. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, Room 458, 101 Independence Avenue, SE., Washington, DC 20540.

Deadline for Filing Financial Disclosure Statement

Publication of today's list also triggers a requirement imposed by the regulations on the individuals named in the list. Section 251.32(a) of the CARP rules provides that, within one month of date of publication of this list in the Federal Register, each listed person must ''file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress.'' The Copyright Office sent financial disclosure statements to the nominating associations, with specific instructions for completing and filing the statement, and asked each organization to distribute the forms to its nominees for the CARP arbitrator list. The Librarian of Congress will use the financial disclosure form to determine what conflicts of interest, if any, may preclude the nominee from serving as an arbitrator in a CARP proceeding. Unlike information submitted by the arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding. Failure to file the statement in a timely manner may preclude consideration of the person for service on an arbitration panel.

The 1996 CARP Arbitration List

Howard B. Abrams, Esq.—American Arbitration Association
Miles J. Alexander, Esq.—Center for Public Resources Inc.
Richard Bennett, Esq.—American Arbitration Association
The Honorable John W. Cooley—JAMS/Endispute
Robert A. Creo, Esq.—JAMS/Endispute
Joel Davidow, Esq.—American Arbitration Association
Edward Dreyfus, Esq.—American Arbitration Association
Corydon B. Dunham, Esq.—American Arbitration Association
The Honorable Lenore G. Ehrig—American Arbitration Association & Judicate, Inc.
The Honorable Jesse Etelson—Judicate, Inc.
John B. Farmakides, Esq.—American Arbitration Association
The Honorable Thomas A. Fortkort—Center for Litigation Alternatives
Richard G. Green, Esq.—American Arbitration Association
Joseph A. Greenwald, Esq.—American Arbitration Association
The Honorable Lewis Hall Griffith—Center for Litigation Alternatives
The Honorable Jeffrey S. Gulin, Esq.—Judicate, Inc.
Professor Hugh C. Hansen—Center for Litigation Alternatives
David C. Hilliard, Esq.—Center for Public Resources, Inc.
The Honorable Mel R. Jiganti—JAMS/Endispute
The Honorable William B. Lawless—''Judge-Net''
Michael K. Lewis, Esq.—Center for Public Resources, Inc.
The Honorable Reuben Lozner—Judicate
Steve A. Mains, Esq.—JAMS/Endispute
The Honorable H. Curtis Meanor—Center for Public Resources, Inc.
The Honorable James R. Miller—JAMS/Endispute
Charles B. Molineaux, Esq.—American Arbitration Association
The Honorable Timothy Murphy—Center for Litigation Alternatives
The Honorable Sharon T. Nelson—American Arbitration Association & Judicate
David W. Plant, Esq.—American Arbitration Association
The Honorable Kathleen A. Roberts—JAMS/Endispute
Peter Carey Schaumber, Esq.—American Arbitration Association
The Honorable Herbert Silberman—Judicate
Linda R. Singer, Esq.—Center for Public Resources, Inc.
John M. Townsend, Esq.—American Arbitration Association
The Honorable Ronald P. Wertheim—JAMS/Endispute & Judicate, Inc.
Bruce Zagaris, Esq.—American Arbitration Association

Dated: February 7, 1996.

Marilyn J. Kretsinger,

Acting General Counsel.

[FR Doc. 96–2993 Filed 2–9–96; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; 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 Civil and Mechanical Systems (#1205).

Date and Time: February 28, 1996, 8:00 a.m. to 5:00 p.m.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Shi-Chi Liu, Program Director in the Division of Civil and Mechanical Systems, Rm 545, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1362.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Structural Control Initiative proposals 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: February 7, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–3060 Filed 2–9–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and soliciation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection:

10 CFR Part 73—Physical Protection of Plants and Materials

2. Current OMB approval number: 3150–0002.

3. How often the collection is required: On occasion. Required reports are collected and evaluated on a continuing basis as events occur.

4. Who is required or asked to report: Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

5. The number of annual responses: 68,643.

6. The number of hours needed annually to complete the requirement or request: 410,602 hours.

7. Abstract: 10 CFR Part 73 prescribes requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The revision reflects an increase in burden because of requirements for the physical fitness, day firing, and vehicle bomb rulemakings that were previously approved by OMB. There was also an adjustment to the burden because of the elimination of the requirement to have licensees submit quarterly log reports.

Submit by April 12, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem within 30 days of the signature date of this notice on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 1st day of February, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2986 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision/Extension

2. The title of the information collection: 10 CFR Part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants.''

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion and every 10 to 20 years for applications for renewal.

5. Who will be required or asked to report: Designers of commercial nuclear power plants, electric power utilities, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. An estimate of the number of responses: Two applications for design certification will be under review during the next three years.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 65,333 hours per year for both applications in addition to the burden associated with 10 CFR Parts 20, 50, 73 and 100 (approved by OMB under Clearance Nos. 3150–0014, 3150–0011, 3150–0002, and 3150–0093, respectively).

8. An indication of whether Section 3507(d), Public Law 104–13 applies: Not applicable.

9. Abstract: 10 CFR Part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit and an operating license with conditions (combined licenses). Part 52 also establishes requirements for renewal of these permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of the public health and safety. The NRC review of such information and the findings derived

from that information form the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

Copies of the submittal may be inspected or obtained from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB reviewer by March 13, 1996: Troy Hillier, Office of Information and Regulatory Affairs (3150–0151), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 2nd day of February 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–2985 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Issuance of Amendment to Materials License SNM–2506 Northern States Power Company

[Docket 72–10]

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Materials License No. SNM–2506 held by Northern States Power Company (NSPC) for the receipt and storage of spent fuel at the Prairie Island independent spent fuel storage installation (ISFSI), located in Goodhue County, Minnesota. The amendment is effective as of the date of issuance.

The amendment request dated October 2, 1995, consists of changes to page 6–1 of Appendix A to the license to correct an inconsistency between the Prairie Island ISFSI Technical Specifications and the Prairie Island Nuclear Generating Plant Technical Specifications. The amendment eliminates the requirements that the ISFSI Annual Radioactive Effluent Release Report be submitted as part of the Nuclear Generating Plant Annual Radioactive Effluent Release Report. The requirement was intended as a convenience since both reports initially had the same due date. Subsequently, the due date for the plant report was extended by a license amendment for the plant technical specifications. However, the ISFSI technical specifications still require that both reports be submitted by the original earlier date. By separating the due dates for the two reports, the additional time now allowed in the plant technical specifications for the submittal of the plant report can be utilized. These changes do not affect fuel receipt, handling, and storage safety.

The amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Minneapolis Public Library, Technology & Science Department, 300 Nicollet Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland this 1st day of February 1996.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–2983 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company Turkey Point Unit Nos. 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the technical specifications (TS) for Facility Operating License No. DPR–31 and DPR–41, issued to Florida Power and Light Company (FPL or the licensee) for operation of Turkey Point Unit Nos. 3 and 4 located in Dade County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed action would modify the Index of the TS to remove reference to the TS Bases pages.

The proposed action is in accordance with the licensee's application for amendment dated November 22, 1995.

The Need for the Proposed Action

The proposed action deletes reference to the TS Bases pages and is in accordance with 10 CFR 50.36(a), which indicates that the Bases shall not become a part of the TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the modification to the Index of the TS is administrative in nature.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Turkey Point Unit Nos. 3 and 4.

Agencies and Persons Consulted

In accordance with its stated policy, on February 5, 1995, the NRC staff consulted with the Florida State official, Dr. Lyle Jerrett of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 22, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 6th day of February 1996.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–2982 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Organization of Agreement States Technical Workshop

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff plans to hold a public meeting for technical representatives of the Organization of Agreement States (OAS). Agreement States are States which have assumed regulatory authority over certain radioactive materials. The purpose of the meeting is to discuss Agreement State Program issues with Agreement State technical representatives. Current topics for discussion include a Status Report on NRC Program Activities, i.e., NRC/EPA Interface Issues, Implementation Procedures for Compatibility Policy and Decommissioning Rule; and individual break out sessions on NRC's review of the National Academy of Sciences Report/Medical Program Area; Industrial Radiography; and Radioactive Devices. In an attempt to better accomodate the number of attendees for this workshop, advanced registration is required by February 14, 1996.

DATES: The meeting will be held from 8:30 a.m. til 5:00 p.m on March 5, 1996, and from 8:30 a.m. til 4:00 p.m. on March 6, 1996.

ADDRESSES: The meeting will be held at the Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington, 360/694–8341. Vancouver is located directly across the Columbia River from Portland, Oregon, and is served by the Portland airport.

FOR REGISTRATION INFORMATION CONTACT: Brenda Usilton, Office of State Programs, Mail Stop OWFN–3–D–23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301/415–2348.

FOR FURTHER INFORMATION CONTACT: Rosetta Virgilio or Stephen Salomon, Office of State Programs, Mail Stop OWFN–3–D–23, U.S. Nuclear Regulatory Commission, Washington, D.C. at 301/415–2307 and 301/415–2368, respectively.

CONDUCT OF THE MEETING: The meeting will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the second day of the meeting will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C. 20555, on or about May 5, 1996.

The following procedures apply to public attendance at the meeting:

1. Questions or statements will be entertained as time permits on a first-come, first-served basis, following breakout session discussion and summary.

2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland, this 2nd day of February, 1996.

For the U.S. Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–2984 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on February 27 and 28, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, MD.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 27, 1996—8:30 a.m. until the conclusion of business.

Wednesday, February 28, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will continue to discuss topics related to Risk-Based Regulatory Applications (RBRA), including identification of the models, analyses and regulatory issues that are currently amenable to risk-based regulatory approach, and the use of PRA in the regulatory decision-making process. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Mike Markley (telephone 301/415–6885) between 7:30

a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–2981 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

Comparisons of Industry Standards Cited in the NRC Standard Review Plan and Related Documents: Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) has published the following three NUREG/CR documents for review and comment: NUREG/CR–6382 entitled ''Comparisons of ASTM Standards Cited in the NRC Standard Review Plan, NUREG–0800, and Related Documents,'' NUREG/CR–6385 entitled ''Comparisons of ANS, ASME, AWS, and NFPA Standards Cited in the NRC Standard Review Plan, NUREG–0800, and Related Documents,'' and NUREG/CR–6386 entitled ''Comparisons of ANSI Standards Cited in the NRC Standard Review Plan, NUREG–0800, and Related Documents.'' In addition, comparisons of selected structural codes and standards cited in the Standard Review Plan or recent NRC staff evaluation reports are presented in Appendix B of NUREG/CR–6358 entitled ''Assessment of United States Industry Structural Codes and Standards for Application to Advanced Nuclear Power Reactors.'' Given recent and ongoing efforts by the NRC to revise Regulatory Guides related to standards issued by the Institute of Electrical and Electronics Engineers (IEEE), comparisons for IEEE standards were not included in these NUREG/CR documents.

These reports provide the results of comparisons of the cited and latest versions of selected industry standards cited in the Nuclear Regulatory Commission Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants (NUREG–0800) and associated Regulatory Guides and Code of Federal Regulations sections. The comparisons in NUREG/CR–6382, -6385, and -6386 were performed by Battelle Pacific Northwest Laboratories. The comparisons in Appendix B of NUREG/CR–6358 were performed by Stevenson and Associates. The work was performed in support of the NRC's Standard Review Plan Update and Development Program, and will be used by the NRC to evaluate whether the SRP citations to the industry standards should be updated. The purpose of this Notice is to solicit public comments on whether the industry standard citations should be updated, and if so, what exceptions should be included with the citations.

DATES: Submit comments on NUREG/CR–6382, –6385, –6386, and Appendix B of NUREG/CR–6358 by May 13, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop T–6 D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

NUREG/CR–6382, –6385, –6386, and –6358 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC 20555–0001. Copies of these documents can also be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20402–9328 or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161–0002.

FOR FURTHER INFORMATION CONTACT: Gene Y. Suh, Office of Nuclear Reactor Regulation, Mail Stop O–12 E4, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1263.

SUPPLEMENTARY INFORMATION: The standard comparisons presented in these documents have been prepared by Battelle Pacific Northwest Laboratories and Stevenson and Associates and have not been reviewed by the NRC staff. Therefore the suggestions and recommendations contained in these reports are the work of the contractors, and their implementation is contingent upon NRC acceptance of justifications for revisions to the SRP. It is anticipated that the contractor's recommendations for SRP citations in the straightforward standard comparisons presented in Section 2 of NUREG/CR–6382, –6385, and –6386 will be implemented, subject to NRC staff review and NRC resolution of public comments. Further staff review and evaluation, including resolution of public comments, will be needed prior to updating the SRP citations for the problematic standard comparisons presented in Section 3 of NUREG/CR–6382, –6385, –6386, and in Appendix B of NUREG/CR–6358. Comments and suggestions concerning the comparisons are solicited, specifically on whether an update to the latest version is appropriate and on any necessary exceptions and qualifications required to update the citations to the latest version.

Dated at Rockville, Maryland, this 5th day of February, 1996.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Chief, Inspection Program Branch, Division of Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 96–2987 Filed 2–9–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–21736; Int'l Series Release No. 928; 812–9188]

The CountryBasket Index Fund, Inc., et al.; Notice of Application

February 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The CountryBasket Index Fund, Inc. (the ''Fund''), Deutsche Morgan Grenfell/C.J. Lawrence Inc. (the ''Adviser''), and ALPS Mutual Fund Services, Inc. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 thereunder and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting the Fund to issue securities of limited redeemability that are intended to trade on the New York Stock Exchange (''NYSE'') at negotiated prices. The order also would permit certain transactions between the Fund and affiliated persons and permit the Fund to make payment for redeemed securities more than seven days from the date such securities are tendered in certain circumstances.

FILING DATE: The application was filed on August 19, 1994 and amended on October 28, 1994, November 30, 1994,

January 10, 1995, March 30, 1995, and June 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 4, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 31 West 52nd Street, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company that initially will consist of nine series. Each series will invest in a portfolio of equity securities included in one of the component indexes of the Financial Times/Standard & Poor's Actuaries World Indices™ (''FT/S&P Indices'') concentrating in a specific country. The initial nine series will represent the FT/S&P Indices for Australia, France, Germany, Hong Kong, Italy, Japan, South Africa, the United Kingdom, and the United States.

2. The Adviser will serve as adviser to the Fund. The Distributor will be the principal underwriter and distributor of the Fund's shares. State Street Bank and Trust Company is expected to provide custodian, transfer agency and fund accounting services for each series.

3. There will be no sales charge for purchases of shares of any series. Applicants expect that pursuant to a plan adopted by the board of directors of the Fund for each series under rule 12b–1 under the Act, each series will pay the Distributor a distribution services fee and a fee for marketing and promotional services. The Adviser will receive an annual fee for its services. Additional fees also will be charged to compensate the providers of custodian, transfer agency, and fund accounting services.

4. Each series of the Fund will issue only aggregations of a specified number of shares (''Creation Units'') that will be separable at the option of the holder into a specified number of identical components (each a ''CB™ Share''). The initial net asset value of the Creation Units are expected to range from approximately $2,000,000 to $5,000,000. The Creation Unit size of each series will be chosen to yield an initial per CB™ Share price, expected to be in the $30 to $50 range, equal to a designated percentage of the value of the relevant FT/S&P Index. Applicants intend to list CB™ Shares of each Fund series on the NYSE where the shares would traded in the secondary market as individual shares in the same manner as other equity securities.

5. Creation Units will be sold continuously at net asset value principally in exchange for a portfolio of equity securities (the ''Fund Basket''), substantially corresponding to the securities represented in the designated component of the FT/S&P Indices and an amount of cash (the ''Cash Component''), which together constitute the ''Fund Deposit.'' Immediately before the opening of business on the NYSE on each Business Day, as defined below, the Distributor and the National Securities Clearing Corporation will announce the securities and the proportion of such securities that will constitute the Fund Basket for that particular Business Day. At the same time, the Adviser will determine, and the Distributor will announce, the amount of the Cash Component necessary to constitute the Fund Deposit. The Cash Component will be equal to the difference between the value of the Fund Basket on that day and the net asset value of the Creation Unit purchased.

6. In order for payment of the Cash Component to be made on the same date as the shares are issued, it is necessary for the Fund's custodian to be open for business for purposes of receiving fund transfers. Consequently, for each series, other than the United States series, a Business Day is any day on which the NYSE, the Fund's custodian and subcustodians, and the relevant stock exchanges are open. For the United States series, a Business Day is any day on which the NYSE and the Fund's custodian are open.

7. An investor making a Fund Deposit will be charged a cash transaction fee on the cash portion of the purchase to cover brokerage and other transaction costs. In addition, investors purchasing or redeeming shares in-kind will bear the costs of transferring the securities to or from the Fund.

8. In the event that the Adviser determines, in its discretion, that a particular security is likely to be unavailable or available in insufficient quantity for delivery to the Fund as part of a Fund Basket on the date of purchase, the cash equivalent value of such security may be required or permitted to be included as part of the Cash Component in lieu of the particular security.

9. To purchase Creation Units, an investor must be, or place its order through, a participant organization (a ''DTC Participant'') in the Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York (the ''Depository''). All orders to purchase Creation Units from the Fund must be placed with the Distributor. The Distributor will be responsible for distributing prospectuses to purchasers of Creation Units.

10. Broker-dealers and other persons will be cautioned in the prospectus and/or the Fund's statement of additional information (''SAI'') that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933. For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from the Fund, breaks them down into the constituent CB™ Shares, and sells the CB™ Shares directly to its customers; or if it chooses to couple the creation of a supply of new CB™ Shares with an active selling effort involving solicitation of a secondary market demand for CB™ Shares. The prospectus and/or the SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's and his client's activities. The prospectus and/or the SAI will explain that dealers who are not statutory underwriters, but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with CB™ Shares that are part of an ''unsold allotment'' within the meaning of section 4(3) of the Securities Act of 1933, would be unable to take advantage of the prospectus-delivery exemption provided by section 4(3) of the Securities Act of 1933.

11. Redemption requests will be accepted on each day that the NYSE is

open. An investor redeeming a Creation Unit generally will receive a Fund Basket of securities and cash equal to the difference in value between such Fund Basket and the net asset value of the Creation Unit aggregation of shares next determined after receipt of the redemption request. A redeeming beneficial holder or DTC Participant acting on behalf of such beneficial holder must maintain appropriate securities broker-dealer, bank, or other custody arrangements in the jurisdiction in which the portfolio securities are customarily traded to which account such portfolio securities will be delivered. If neither the redeeming beneficial holder nor the DTC Participant has appropriate arrangements to take delivery of the portfolio securities in the applicable foreign jurisdiction, and it is not possible to make other such arrangements, or if it is not possible to effect deliveries of the portfolio securities in such jurisdiction, the Fund will redeem such shares in cash. In such circumstances, or if the Fund concludes that operating on an exclusively in-kind basis presents marketing or operational problems for a specific series, the Fund reserves the right to offer a cash option for sales and to make redemptions in cash in respect of any series. When investors redeem in cash, in whole or in part, the Fund will charge a cash redemption fee to cover brokerage and other transactions costs.

12. Fund shares will be registered in book-entry form only; certificates will not be issued. The Depository or its nominee will be registered owner of all outstanding Fund shares. Records reflecting the beneficial owners of Fund shares will be maintained by the Depository or a DTC Participant.

13. Owner of Creation Units may hold the units or sell them into the secondary market as CB™ Shares. The CB™ Shares are intended to be listed on the NYSE and trade in the secondary market in the same manner as other equity securities. The price of CB™ Shares on the NYSE will be based on a current bid/offer market. Transactions involving the sale of CB™ Shares will be subject to customary brokerage commissions and charges. Brokers will deliver a Fund prospectus to each investor in connection with the secondary market purchase by such investor of CB™ Shares on the NYSE. The Fund will provide copies of its annual and semi-annual shareholder reports to beneficial holders of CB™ Shares. Each individual CB™ Share will have one vote with respect to matters regarding the Fund or the respective series upon which a shareholder vote is required.

14. In order to avoid confusion in the public's mind between the Fund and a conventional ''open-end investment company'' or ''mutual fund,'' the Fund will limit the designation of the Fund in all marketing materials, including the Fund's prospectus and SAI, to the term ''investment company,'' without reference to ''open-end fund'' or ''mutual fund.'' The term ''mutual fund'' will not be used at any time. The term ''open-end investment company'' will be used in the prospectus only to the extent required by item 4 of Form N–1A.[1] The cover page of the prospectus and the summary will include a distinct paragraph stating that the CB™ Shares will not be individually redeemable. The description of the Creation Units and the method of their purchase and redemption will follow such paragraph on the CB™ Shares. The SAI will include an explanation of the issuance and redemption procedures for Creation Units. All marketing materials that describe the method of obtaining, buying, or selling CB™ Shares, will state that the CB™ Shares are non-redeemable.

15. Applicants believe that purchasers of Creation Units will include institutional investors who desire a foreign index-based fund with the liquidity provided by exchange traded shares. In addition, arbitrageurs may purchase Creation Units to take advantage of a premium in the market price of CB™ Shares. Finally, the exchange specialist, acting in its role to provide a fair and orderly secondary market for the CB™ Shares, may find it appropriate at times to create CB™ Shares for use in its market-making activities on the exchange.

16. Applicants believe that arbitrage activity will enhance the liquidity of the CB™ Shares in the secondary market and help ensure that CB™ Shares will not trade at a material discount or premium in relation to the Fund's net asset value.

Applicants' Legal Analysis

Section 6(c)

1. Applicants request relief under section 6(c) of the Act from sections 2(a)(32), 5(a)(1), 17(a)(1), 17(a)(2), 22(d), and 22(e) and rule 22c–1 and under sections 6(c) and 17(b) from sections 17(a)(1) and 17(a)(2). Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the SEC, under section 6(c), may exempt a series of transactions that otherwise would be prohibited by section 17(a).

Sections 2(a)(32) and 5(a)(1)

1. Section 5(a)(1) defines an ''open-end company'' as a ''management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.'' The term ''redeemable security'' is defined in section 2(a)(32) as a security which entitles the holder to receive, upon presentation of the security to the issuer, approximately his or her proportionate share of the issuer's current net assets.

2. Because the Creation Units are separable into CB™ Shares that are not individually redeemable, a question arises as to whether the definition of a ''redeemable security'' or an ''open-end company'' under the Act would be met if such shares are viewed as non-redeemable securities. In light of this question, the Fund requests an order to permit it to maintain its registration as an open-end investment company and to issue shares that are redeemable only in Creation Units.

3. Applicants note that owners of CB™ Shares wishing to redeem may purchase additional CB™ Shares and tender the resulting Creation Unit for redemption. Moreover, NYSE listing will afford shareholders the benefit of liquidity. Applicants believe that because Creation Units always may be purchased and redeemed at net asset value, arbitrage opportunities will ensure that the price of CB™ Shares on the secondary market will not vary substantially from the net asset value of Creation Units. Also, the investor has the ability to purchase or redeem Creation Unit aggregations of shares rather than trade in the secondary market.

Section 22(d) and Rule 22c–1

1. Section 22(d), among other things, prohibits a dealer from selling a

[1] Item 4 of Form N–1A requires an investment company to state in its prospectus its classification and subclassification under sections 4 and 5 of the Act.

redeemable security that is being currently offered to the public by or through an underwriter except at the current public offering price described in the prospectus. Rule 22c–1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in CB™ Shares will take place at negotiated prices and not at a current offering price described in the prospectus or on the basis of net asset value. Thus, purchases and sales of CB™ Shares by dealers in the secondary market may not comply with section 22(d) and rule 22c–1.

2. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been enacted (a) to prevent dilution caused by certain risk-free trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that the concerns sought to be addressed by section 22(d) and rule 22c–1 with respect to pricing are equally satisfied by the proposed method of pricing CB™ Shares. First, secondary market trading in CB™ Shares, because it does not involve the Fund as a party, cannot result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in CB™ Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of CB™ Shares and their net asset value remains narrow.

Section 22(e)

1. Section 22(e) provides that an investment company may not postpone the date of payment or satisfaction upon the redemption of any redeemable security for more than seven calendar days following tender of such security for redemption. To the extent that Creation Units may be deemed to be redeemable securities, applicants request an exemption to permit the Japan series to redeem Creation Units within ten days, and the United Kingdom series to redeem Creation Units within twelve days at certain times during the calendar year. The custodian has advised the Fund that local holiday schedules combined with local settlement periods will require more than seven calendar days for delivery of redemption proceeds several times during the calendar year for these two series. Applicants expect, however, that these series will be able to deliver redemption proceeds within seven days at all other times. Applicants do not request an exemption from section 22(e) with respect to the other series.[2]

2. The Fund believes that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. The prospectus, SAI, and all relevant sales literature for the Japan and the United Kingdom series will disclose that redemption payments will be effected within the specified number of calendar days following the date on which a request for redemption is made. Applicants contend that the redemption mechanism described above will not lead to unreasonable, undisclosed, or unforeseen delays in the redemption process.

3. Applicants believe that requiring the Fund to deliver securities upon redemption on a basis other than that utilized by all other investors trading portfolio securities in the particular local market (e.g., irrespective of whether a holiday occurs during the relevant settlement period), would be highly burdensome to the series and possibly unacceptable to local market participants. The same concerns are relevant to both redemptions in-kind and redemptions for cash. Since the Fund will be fully invested at almost all times, generally it will need to liquidate portfolio holdings in order to generate the cash needed to finance cash redemptions. It would be highly burdensome if the Fund were forced to do this outside of the settlement cycles of the local market for the reasons discussed above.

4. Applicants believe that allowing redemption payments for Creation Units of a series to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e).

Section 17(a)

1. Applicants request an exemption under sections 6(c) and 17(b) from section 17(a) of the Act to permit affiliated persons of the Fund to purchase and redeem Creation Units. Section 17(a) generally prohibits an affiliated person of a registered investment company from purchasing from or selling to such company any security or other property. Because purchases and redemptions will be in-kind rather than cash transactions, section 17(a) may prohibit affiliated persons of the Fund from purchasing or redeeming Creation Units. Moreover, because the definition of affiliated person includes anyone owning 5% or more of an issuer's outstanding voting stock, at least one purchaser of a Creation Unit will be affiliated with the Fund so long as there are twenty or fewer holders of Creation Units.

2. Applicants contend that no useful purpose would be served by prohibiting affiliated persons from making in-kind purchases or redemptions of Creation Units. In-kind purchases and redemptions will be valued pursuant to verifiable objective standards. The securities to be used for the in-kind purchase or redemption will be those in the Fund Basket, which is based on the FT/S&P Indices. The FT/S&P Indices are widely publicized and not subject to manipulation by the Fund or its affiliates. Thus, in-kind purchases and redemptions will afford no opportunity for affiliated persons to effect a transaction detrimental to the other shareholders. Applicants believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Fund. Accordingly, applicants believe that the requested relief meets the section 6(c) and section 17(b) standards for relief.

Applicants' Arguments

1. Applicants assert that CB™ Shares will allow investors to have a beneficial interest in a standardized portfolio of foreign equity securities based on a major market index. Applicants believe that the Fund should be able to track the FT/S&P Indices more closely than other basket products that must allocate a portion of their assets for cash redemptions. Even though a series may in some instances redeem in cash, applicants believe that they can still keep their assets fully invested; they expect there will be fewer redemptions than would be the case for a conventional mutual fund in view of the

[2] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Securities Exchange Act of 1934. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

need to accumulate a Creation Unit to tender for redemption. In addition, applicants believe that CB™ shares will provide a relatively low-cost market-basket security that, unlike open-end index funds, can be treated at negotiated prices throughout the business day. Finally, CB™ shares will broaden the trading, investing and hedging opportunities available to investors with respect to a significant segment of the international and domestic securities markets.

2. Applicants state that they will take such steps as may be necessary to avoid confusion in the public's eye between the Fund and a conventional ''open-end investment company'' or ''mutual fund.'' In addition, applicants state that brokers will deliver a prospectus to each investor in connection with the secondary market purchasers by investors of CB™ Shares on the NYSE. Thus, applicants believe that the requested relief meets the section 6(c) standards.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will not be advertised or marketed as an open-end investment company, *i.e.*, as a mutual fund, which offers redeemable securities. The Fund prospectus will prominently disclose that the CB™ Shares are *not* redeemable units of shares and will disclose that the owners of the CB™ Shares may acquire and tender those shares for redemption to the Fund in Creation Unit aggregations only. Any advertising material where features of obtaining, buying, or selling Creation Units are described or where there is reference to redeemability will prominently disclose that owners of CB™ Shares may acquire and tender those shares for redemption to the Fund in Creation Unit aggregations only.

2. The Fund will provide copies of its annual and semiannual shareholder reports to beneficial owners of the CB™ Shares.

3. Applicants will not seek to have the Fund's registration statement declared effective until the SEC has approved such proposed rule change pursuant to rule 19b–4 under the Securities Exchange Act of 1934 as may be necessary to enable a national securities exchange to list the CB™ Shares.

4. In addition, as long as the Fund operates in reliance on the requested order, the CB™ Shares will be listed on a national securities exchange.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3043 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21734; No. 812–9856]

The Evergreen Variable Trust, et al.

February 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Evergreen Variable Trust (''Trust'') and Evergreen Asset Management Corporation (''Evergreen Asset'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company that is designed to fund variable insurance products and for which Evergreen Asset or its affiliates may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Trust, ''Funds'') to be sold to and held by: (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside the separate account context.

FILING DATE: The application was filed on November 14, 1995. An amended application was filed on January 29, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: c/o Joseph J. McBrien, Esq., Evergreen Asset Management Corp., 2500 Westchester Avenue, Purchase, New York 10577.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts Business Trust. The Trust currently consists of three separately managed series (collectively, ''Portfolios''). Additional series may be offered in the future (''Future Portfolios'').

2. Evergreen Asset serves as investment adviser to the Trust and is a registered investment adviser under the Investment Advisers Act of 1940. Evergreen Asset is a wholly-owned subsidiary of First Union National Bank of North Carolina, a national bank, which is, in turn, a wholly-owned subsidiary of First Union Corporation, a bank holding company.

3. Applicants state that shares of the Trust currently are proposed to be offered only to variable annuity separate accounts, registered with the Commission under the 1940 Act as unit investment trusts, established by The Nationwide Life Insurance Company (''Nationwide'').

4. Applicants state further that shares of the funds will be offered in the future to insurance company separate accounts [1] that fund variable annuity and variable life insurance established by Nationwide and its affiliate insurance companies and by unaffiliated insurance companies (collectively, ''Participating Insurance Companies'') that fund variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium) (collectively, ''Variable Contracts''). Each Participating Insurance Company will enter into a fund participation agreement (''Participation Agreement'')

[1] Applicants represent that these separate accounts will be either registered as investment companies under the 1940 Act or exempt from registration under the 1940 Act pursuant to Section 3(c)(1).

with the Trust on behalf of the Fund in which the Participating Insurance Company invests. Applicants state that the Participating Insurance Companies will rely on Rules 6e–2 or 6e–3(T) and may rely on individual exemptive orders.

5. In connection with any Variable Contract issued by a Participating Insurance Company, the application states that each such company will have the legal obligation of satisfying all applicable requirements under federal securities laws. Applicants further state that the role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the separate accounts of Participating Insurance Companies and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants also states that shares of the Funds also may be offered directly to qualified pension and retirement plans (''Plans'') outside of the separate account context.

7. Applicants state that applicable tax law permits the Funds to increase their asset base through the sale of Fund shares to Plans without endangering the tax status of Variable Contracts issued by Participating Insurance Companies. The Plans may choose any of the Funds as the sole investment option under the Plan or as one of several investment options. Participants may be given an investment choice depending upon the Plan. Shares of any of the Funds sold to Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Evergreen Asset currently has no plans to offer investment advisory services to Plans that will purchase shares of the Funds or to participants in such Plans (''Plan Participants''). Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to Plan Participants.

Applicants' Legal Analysis

1. Applicants requests an order that would exempt variable life insurance separate accounts of Participating Insurance Companies (and any principal underwriters and depositors of such separate accounts), from Sections 9(a), 13(a), 15(a) and 15(b) and the 1940 Act, and paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Funds to be sold to, and held by: (a) variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies; and (b) qualified pension and retirement plans outside of the separate accounts context.

Mixed and Shared Funding and Sales to Plans

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''Separate Account-UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2(b)(15) extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the Separate Account-UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.''

3. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company.[2] Rule 6e–2(b)(15), therefore, precludes mixed and shared funding.

4. In connection with flexible premium variable life insurance contracts issued through a Separate Account-UIT Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 15(a) and 15(b) of the 1940 Act. The exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance * * *.'' Rule 6e–3(T) thus permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions, but precludes shares funding.

5. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management; the lack of name recognition by the public of certain insurers as investment professionals. Applicants argue that use of the Funds as common investment media for the Variable Contracts would east these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Variable Contracts which may, in turn, increase competition with respect to both the design and pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Applicants thus argue that Variable Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote

[2] Applicants note that amendments to Rule 6E–2 have been proposed by the Commission and, if adopted, would permit shares of one underlying fund to be sold to separate accounts of the insurer, or any affiliated life insurance company offering variable annuity contracts or scheduled premium or flexible premium variable life insurance. *See* Release No. IC–14421 (Mar. 15, 1985). The proposed amendment, however, would not permit shares of one underlying fund to be sold to separate accounts of unaffiliated companies.

economies of scale, permit increased safety of investment through greater diversification, and make the addition of new portfolios more feasible.

6. Applicants state that, because relief under paragraph (b)(15) of Rules 6e–2 and 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans. Applicants assert that the relief granted by paragraph (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of fund shares to Plans because such sales may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies. Applicants further assert that they are not aware of any stated rationale for the exclusion of separate accounts and investment companies engaged in shared funding from the exemptive relief provided under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), or for the exclusion of separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under rule 6e–2(b)(15). Similarly, Applicants are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because the Funds also may sell their respective shares to qualified pension and retirement plans.

7. Applicants state that current tax law permits funds to increase their asset base through the sale of Fund shares to plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification requirements on the underlying assets of Variable Contracts invested in the Funds. The Code provides that such Variable Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified, as prescribed by Treasury Department regulations; to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies, subject to certain exceptions. Treas. Reg. § 1.817–5 (1989). For example, shares in an investment company may be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with the variable contracts. Treas. Reg. § 1.817–5(b)(3)(iii).

8. Applicants state that the promulgation of rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder to the extent necessary to permit shares of the Funds to be offered and sold now and in the future to separate accounts of Participating Insurance Companies in connection with both mixed and shared funding, and to be sold directly to Plans. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Funds.

Disqualification

10. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification specified in Sections 9(a)(1) or 9(a)(2).

11. Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

12. Applicants state that the partial relief from Section 9(a) found in subparagraph (b)(15) of Rules 6e–2 and 6e–3(T), in effect, limits the monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or for the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans. Plans are not investment companies and are not, therefore, subject to Section 9(a).

Pass-Through Voting

13. Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to underlying investment company shares held by a separate account. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that the participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission interprets the 1940 Act to require such privileges, and that Participating Insurance Companies will vote all shares as to which no response from Variable Contract owners is timely received, as well as shares owned by them, in the same proportion as shares for which voting instructions are received.

14. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides partial exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding. Subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) provides that the insurance company may disregard voting instructions of its contract owners with respect to the subclassification or investment objectives of a fund or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority.

15. Subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph

(b)(15)(iii)(A)(2) of Rule 6e–3(T) provides that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b(5)(iii) and (b)(7)(ii) (B) and (C) of each rule.

16. Applicants represent that the Funds' sale of shares to Plans does not affect the relief requested in this regard. As previously noted, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) are subject to the direction of the named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA.

17. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. In addition, Applicants represent that there is no contractual or other relationship between the Participating Insurance Companies and any Plans which, for example, would affect the solvency of the insurer or the performance of its contractual obligations, or would be expected to increase the risks undertaken by the insurer. Accordingly, Applicants assert that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans are not entitled to pass-through voting privileges.

Applicants further assert that investment in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

18. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Variable Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

19. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

20. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

21. Applicants also argue that affiliation does not eliminate the potential, if any, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Variable Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

22. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Variable Contract.

23. Applicants note that Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension of retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

24. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account of the Participating Insurance Company or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the separate account into the general account to make

distributions in accordance with the terms of the Variable Contract.

25. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of Plan Participants and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

26. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Variable Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share ownership in the respective Funds. A Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirements of Rules 6e-2 and 6e–3(T).

27. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Variable Contract owners under their respective Plans and Variable Contracts, Plans and separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

28. Applicants state that there are no conflicts between Variable Contract owners and Plan Participants with respect to the state insurance commissioner's veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies can not simply redeem their separate accounts out of one fund and invest those assets in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of (or participants in) Plans can redeem shares of the Funds held by them and reinvest in another Fund without the same regulatory impediments or, as is the case with most Plans, even hold cash or other liquid assets pending suitable alternative investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Variable Contract owners and the interests of the Plans conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

29. Applicants have concluded that the addition of Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants assert further that, even if a material irreconcilable conflict involving Plans arose, the trustees of (or participants in) the Plans, unlike the separate accounts, can redeem their shares and make alternative investments. Applicants thus submit that allowing Plans to invest directly in shares of the Funds should not increase the opportunity for conflicts of interest.

30. Further, Applicants state that, regardless of the types of Fund shareholders, Evergreen Asset is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Evergreen Asset works with a pool of money without consideration for the identity of shareholders, and, thus, manage the Funds in the same manner as any other mutual fund.

31. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans, such as the Plans. Applicants note further that there is ample precedent for extending exemptive relief to members of a class or classes or persons, not currently identified, that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the 1940 Act's provisions including class exemption in the context of mixed and shared funding.

Applicants' Conditions

The Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors (each a ''Board'') of each Fund shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director or Trustee, then the operation of this condition shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filed by the appropriate Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Funds for the existence of any material irreconcilable conflict among the interests of the Variable Contract owners of all the separate accounts of Participating Insurance Companies and of Plan Participants investing in the respective Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; (f) a decision by a Participating Insurance Company to disregard voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan Participations.

3. Participating Insurance Companies, Evergreen Asset (or any other investment manager of a Fund), and any Plan that executes a Participation Agreement upon becoming an owner of 10% of more of the assets of a Fund (collectively, ''Participants'') shall report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the appropriate Board in carrying out its

responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by Evergreen Asset and each Participating Insurance Company to inform the Board whenever it has determined to disregard Variable Contract holders' voting instructions and, if pass-through voting is a applicable, an obligation by Evergreen Asset and a Plan to inform the Board whenever it has determined to disregard Plan Participants voting instructions. The responsibility to report such information and conflicts and the assist the Board will be a contractual obligation of the Participants investing in the Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Variable Contract owners and, if applicable, Plan Participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of its disinterested members, that a material irreconcilable conflict exists, the Participants shall, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested trustees or members of the Board), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) withdrawing the assets allocable to some or all of the separate accounts from a Fund or its portfolio and reinvesting such assets in a different investment medium (including another series of a Fund or another Fund); (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan Participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination that an irreconcilable material conflict exists, and to bear the cost of such remedial action, shall be a contractual obligation of the Participants under their agreements governing participating in the Funds, and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan Participants.

For purposes of this Condition ''4.,'' a majority of disinterstated members of the applicable Board shall determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Fund or Evergreen Asset (or any other investment adviser to the Funds) be required to establish a new funding medium for any Variable Contract. Further, no Participating Insurance Company shall be required by this Condition ''4.'' to establish a new funding medium for any Variable Contract if an offer to do so has been declined by a vote of a majority of Variable Contract owners materially affected by the irreconcilable material conflict. No Participating Plan shall be required by this Condition ''4.'' to establish a new funding medium for such Plan if (a) a majority of Plan Participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plan Participant vote.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to the Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Fund held in in its separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners.

Also, each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Funds.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, as well as to qualified pension and retirement plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Funds and the interests of Plans investing in the Funds to conflict; and (c) each Fund's Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Funds). In particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not

to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of a Board shall be a contractual obligation of all Participants under their agreements governing their participation in the Funds.

12. If a Plan or Plan Participant should become an owner of 10% or more of the assets of a Fund, such Plan will execute a Fund participation agreement with the applicable Fund, including the conditions set forth herein to the extent applicable. A Plan or Plan Participant will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2 and 6e–3(T) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3044 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21737; Int'l Series Release No. 929; 812–9234]

The Foreign Fund, Inc., et al.; Notice of Application

February 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Foreign Fund, Inc. (the ''Fund''), BZW Barclays Global Funds Advisors (the ''Adviser''), and Fund Distributor, Inc. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 thereunder and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting the Fund to issue securities of limited redeemability that are intended to trade on the American Stock Exchange (the ''AMEX'') at negotiated prices. The order also would permit certain transactions between the Fund and affiliated persons and permit the Fund to make payment for redeemed securities more than seven days from the date such securities are tendered in certain circumstances.

FILING DATE: The application was filed on August 19, 1994 and amended on December 23, 1994, May 19, 1995, and January 17, 1996. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 4, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 400 Bellevue Parkway, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company that initially will consist of seventeen series (the ''Index Series''). Each Index Series will invest in a portfolio of equity securities consisting of some or all of the component securities of a specified foreign securities index (the ''Portfolio Securities''). Applicants have selected the indices compiled by Morgan Stanley Capital International (the ''MSCI Indices'') as the indices for the seventeen Index Series. The seventeen Index Series will represent, respectively, the MSCI Indices for Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico, the Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

2. The Fund will be managed and advised by the Adviser. PFPC Inc. is expected to provide certain administrative services to each Index Series. The principal underwriter and distributor of the Fund's shares will be the Distributor.

3. The Fund may impose a sales commission on all cash sales orders received during the initial subscription period of an Index Series. Applicants expect that pursuant to a plan adopted by the board of directors of the Fund for each Index Series under rule 12b–1 under the Act, each Index Series will pay fees to the Distributor, calculated daily and payable monthly, on an annualized basis, of a specified percentage of the average daily net assets of the Index Series (subject to the maximum of .25% per annum thereof). Such monies may be used to cover the expenses of the Distributor primarily intended to result in the sale of shares of each Index Series. The Adviser and PFPC Inc. also will receive fees for their services.

4. Each Index Series will issue shares referred to as ''World Equity Benchmark Shares℠'' (the ''WEBS''). WEBS of an Index Series will be issued and sold by the Fund only in aggregations of a specified number of WEBS (the ''Creation Units'') that will be separable at the option of the holder into WEBS. Shareholders of an Index Series will have one vote per WEB with respect to matters regarding the Fund or the respective Index Series upon which a shareholder vote is required. The initial net asset value of the Creation Units is expected to range from approximately $450,000 to $10,000,000. Applicants intend to list the WEBS on the AMEX.

5. The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York (the ''Depository'') or its nominee will be the record or registered owner of all outstanding WEBS. Beneficial ownership of WEBS will be shown on the records of the Depository or its participating organizations (''DTC Participants''). Creation Units of WEBS may be purchased only by or through a DTC Participant that has entered into an Authorized Participant Agreement with the Fund and the Distributor (an ''Authorized Participant''). The Distributor will be responsible for distributing prospectuses to purchasers of Creation Units.

6. The Fund will offer, issue, and sell Creation Units through the Distributor on a continuous basis at the net asset value per share next determined after it receives an order in proper form. Creation Units generally will be issuable in exchange for the deposit of portfolio securities and a specified cash payment; redemptions of Creation Units generally will be for portfolio securities and a specified cash payment. The Fund will sell shares of each Index Series only on Business Days. A ''Business Day'' is defined with respect to each Index Series as any day that the New York Stock Exchange and the stock exchange(s) and Fund subcustodian(s) relevant to such Index Series are open for business.

7. Payment with respect to orders placed through the Distributor will be made by in-kind deposit or, when available in respect of a particular Index Series, by cash. An in-kind purchase will be made by the in-kind deposit with the Fund of a portfolio of securities that is of essentially the same composition and weighting as the component shares selected by the Adviser to correspond to the returns of the relevant index (the ''Deposit Securities''), together with a cash payment in an amount equal to the Dividend Equivalent Payment (as defined below), plus or minus a Balancing Amount (as defined below). The ''Dividend Equivalent Payment'' is an amount equal, on a per Creation Unit basis, to the dividends on all the Portfolio Securities with exdividend dates within the accumulation period for such distribution, net of expenses and liabilities for such period, as if all of the Portfolio Securities had been held by the Fund for the entire period. The ''Balancing Amount'' is an amount equal to the difference between the net asset value (per Creation Unit) of the Index Series and the sum of the Dividend Equivalent Payment and the market value (per Creation Unit) of the securities deposited with the Fund. The Dividend Equivalent Payment and the Balancing Amount are collectively referred to as the ''Cash Component,'' and the deposit of the Deposit Securities together with the appropriate Cash Component is referred to as a ''Portfolio Deposit.'' In addition, investors purchasing shares in-kind will bear the costs of transferring the securities to the Fund. All purchases will be subject to a transaction fee, with a higher fee charged for cash purchases.

8. The Adviser will make available through the Distributor and by other means on each Business Day, immediately prior to the opening of business on the AMEX, the names and required number of shares of each Deposit Security included in the current Portfolio Deposit for each Index Series. Such Portfolio Deposit will be applicable, subject to any adjustments, for purchases of Creation Unit aggregations of shares of a given Index Series until such time as the next-announced Portfolio Deposit composition is made available. The adjustments will reflect changes, known to the Adviser on the date of announcement to be in effect by the time of delivery of the Portfolio Deposit, in the composition of the subject index being tracked by the Relevant Index Series, or resulting from stock splits and other corporate actions.

9. Broker-dealers and other persons will be cautioned in the prospectus and/or the Fund's statement of additional information (''SAI'') that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933. For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from the Fund, breaks them down into the constituent WEBS, and sells the WEBS directly to its customers; or if it chooses to couple the creation of a supply of new WEBS with an active selling effort involving solicitation of a secondary market demand for WEBS. The prospectus and/or the SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's and his client's activities. The prospectus and/or the SAI will explain that dealers who are not statutory underwriters, but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with WEBS that are part of an ''unsold allotment'' within the meaning of section 4(3) of the Securities Act of 1933, would be unable to take advantage of the prospectus-delivery exemption provided by section 4(3) of the Securities Act of 1933.

10. Creation Units will be redeemable for a portfolio of securities generally consisting of Deposit Securities as announced by the Distributor on the Business Day that the request for redemption is received in proper form, together with a cash redemption payment, which on any given Business Day will be an amount identical to the amount of the Cash Component. A redeeming beneficial owner, or Authorized Participant acting on behalf of such beneficial owner, must maintain appropriate securities broker-dealer, bank, or other custody arrangements in each jurisdiction in which any of the Portfolio Securities are customarily traded, to which account such Portfolio Securities will be delivered. If neither the redeeming beneficial owner nor the Authorized Participant has appropriate arrangements to take delivery of the Portfolio Securities in the applicable foreign jurisdiction, and it is not possible to make other such arrangements, or if it is not possible to effect deliveries of the Portfolio Securities in such jurisdiction, the Fund may in its discretion redeem such shares for cash. In such circumstances, or if the Fund concludes that operating on an exclusively in-kind basis presents marketing or operational problems for a specific series, the Fund reserves the right to offer a cash option for sales and to make redemptions in cash in respect of any Index Series. A transaction fee to cover brokerage and other transaction costs will be deducted from the redemption proceeds, with a higher fee charged for cash redemptions. In addition, investors redeeming shares in-kind will bear the costs of transferring the securities from the Fund.

11. Owners of Creation Units may hold the units or sell some or all of them into the secondary market as WEBS. Applicants intend to list the WEBS on

the AMEX so that they may trade in the secondary market in the same manner as other equity securities. However, the WEBS may not be redeemed from the Fund unless reconstituted into Creation Units. The price of WEBS on the AMEX will be based on a current bid/offer market. Transactions involving the sale of WEBS will be subject to customary brokerage commissions and charges. The Distributor will act as coordinator in connection with the distribution of prospectuses to broker-dealers. In addition, the Fund will provide copies of its annual and semi-annual shareholder reports to the DTC Participants for distribution to the beneficial holders of WEBS.

12. In order to avoid confusion in the public's mind between the Fund and a conventional ''open-end investment company'' or ''mutual fund,'' the Fund will limit the designation of the Fund in all marketing materials, including the Fund's prospectus and SAI, to the term ''investment company,'' without reference to ''open-end fund'' or ''mutual fund.'' The term ''mutual fund'' will not be used at any time. The term ''open-end investment company'' will be used in the prospectus only to the extent required by item 4 of Form N–1A.[1] The cover page of the prospectus and the summary will include a distinct paragraph stating that the WEBS will not be individually redeemable. The description of the Creation Units and the method of their purchase and redemption will follow such paragraph on the WEBS. The SAI will include an explanation of the issuance and redemption procedures for Creation Units. All marketing materials that describe the method of obtaining, buying, or selling WEBS, will state that the WEBS are non-redeemable.

13. Applicants believe that there are two large categories of investors who are likely to be interested in purchasing Creation Units. One is the institutional investor who desires a foreign index-based fund with the liquidity provided by exchange traded shares. The other likely institutional investor is the arbitrageur, who will purchase or redeem Creation Units in pursuit of arbitrage profit. Applicants believe that arbitrage activity will enhance the liquidity of the WEBS in the secondary market and also help ensure that WEBS will not trade at a material discount or premium in relation to the Fund's net asset value.

[1] Item 4 of Form N1A requires an investment company to state in its prospectus its classification and subclassification under sections 4 and 5 of the Act.

14. Applicants expect WEBS to be purchased and traded by ''retail'' investors that primarily seek to invest in WEBS in smaller quantities exclusively through purchases and sales executed on the AMEX and institutional investors that may purchase and redeem Creation Unit aggregations of WEBS directly with the Fund in addition to trading such shares on the AMEX.

15. Because applicants expect that ''retail'' investors will purchase WEBS on the AMEX and not Creation Units, the prospectus of an Index Series would include only a minimal description of the creation and redemption mechanics pertaining to Creation Units. The SAI will contain a detailed description of the mechanics for purchasing and redeeming Creation Units. Applicants contemplate that in all cases the SAI would be delivered along with the prospectus to any investors in connection with purchases of Creation Units.

Applicants' Legal Analysis

Section 6(c)

1. Applicants request relief under section 6(c) of the Act from sections 2(a)(32), 5(a)(1), 17(a)(1), 17(a)(2), 22(d), and 22(e) and rule 22c–1 and under sections 6(c) and 17(b) from sections 17(a)(1) and 17(a)(2). Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the SEC, under section 6(c), may exempt a series of transactions that otherwise would be prohibited by section 17(a).

Sections 2(a)(32) and 5(a)(1)

1. Section 5(a)(1) of the Act defines an ''open-end company'' as a ''management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.'' The term ''redeemable security'' is defined in section 2(a)(32) as a security which entitles the holder to receive, upon presentation of the security to the issuer, approximately his or her proportionate share of the issuer's current net assets.

2. Because the Creation Units are separable into WEBS that are not individually redeemable, a question arises as to whether the definition of a ''redeemable security'' or an ''open-end company'' under the Act would be met if such shares are viewed as non-redeemable securities. In light of this question, the Fund requests an order to permit it to maintain its registration as an open-end investment company and to issue shares that are redeemable only in Creation Units.

3. Applicants note that owners of WEBS wishing to redeem may purchase additional WEBS and tender the resulting Creation Unit for redemption. Moreover, AMEX listing will afford shareholders the benefit of liquidity. Applicants believe that because Creation Units may always be purchased and redeemed at net asset value, arbitrage opportunities will ensure that the price of WEBS on the secondary market will not vary substantially from the net asset value of Creation Units. Also, the investor has the ability to purchase or redeem Creation Unit aggregations of shares rather than trade in the secondary market.

Section 22(d) and Rule 22c–1

1. Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter except at the current public offering price described in the prospectus. Rule 22c–1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its net asset value. Secondary market transactions in WEBS will take place at negotiated prices and not at a current offering price described in the prospectus or on the basis of net asset value. Thus, purchases and sales of WEBS by dealers in the secondary market may not comply with section 22(d) and rule 22c–1.

2. While there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been enacted (a) to prevent dilution caused by certain risk-free trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) to assure an orderly distribution of investment company shares by eliminating price competition from

dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that the concerns sought to be addressed by section 22(d) and rule 22c–1 with respect to pricing are equally satisfied by the proposed method of pricing WEBS. First, secondary market trading in WEBS, because it does not involve the Fund as a party, cannot result in dilution of a beneficial owner's investment. Second, to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand and interest rates, not as a result of unjust or discriminatory manipulation. Therefore, secondary market trading in WEBS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of WEBS and their net asset value remains narrow.

Section 22(e)

1. Section 22(e) provides that an investment company may not postpone the date of payment or satisfaction upon the redemption of any redeemable security for more than seven calendar days following tender of such security for redemption. To the extent that Creation Units may be deemed to be redeemable securities, applicants request an exemption to permit the Spain Index Series to redeem Creation Units within eight days, the Belgium and Netherlands Index Series within nine days, the Austria, Germany, Hong Kong, Italy, Mexico, Singapore, Sweden, and Switzerland Index Series within ten days, the Malaysia Index Series within eleven days, and the Japan Index Series within thirteen days at certain times during the calendar year. The custodian has advised the Fund that local holiday schedules combined with local delivery cycles will require more than seven calendar days for delivery of redemption proceeds several times during the calendar year for these Index Series. Applicants expect, however, that these Index Series will be able to deliver redemption proceeds within seven days at all other times. Applicants do not request an exemption from section 22(e) with respect to the other four Index Series.[2]

2. The principal reason for the requested exemption is that settlement of redemptions in respect of the Fund's Index Series is contingent not only on the settlement cycle of the United States market but also on the delivery cycles possible in the local markets for the underlying foreign securities of each Index Series. Applicants believe that the Fund will be able to comply with the delivery requirement of section 22(e) except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

3. Applicants intend to utilize in-kind redemptions to the maximum extent possible to assure the fullest investment of Fund assets in portfolio securities. Applicants believe that the requested exemption will make issuance and redemption of Fund shares less costly to administer, enhance the appeal of the product to professional participants, and thereby promote the liquidity of WEBS in the secondary market which would benefit all shareholders.

4. The Fund believes that Congress adopted section 22(e) to prevent unforeseen delays in the actual payment of redemption proceeds. The prospectus, SAI, and all relevant sales literature for the affected Index Series will disclose that redemption requests for those series will be honored within the specified number of days following the date on which a request for redemption is made. Applicants contend that the redemption mechanism described above will not lead to unreasonable, undisclosed, or unforeseen delays in the redemption process.

5. Applicants believe that allowing redemption payments for Creation Units of an Index Series to be made within the number of days indicated above would not be inconsistent with the spirit and intent of section 22(e), and that a redemption payment occurring within such number of calendar days following redemption request would adequately afford investor protection.

Section 17(a)

1. Applicants request an exemption under sections 6(c) and 17(b) from section 17(a) of the Act to permit affiliated persons of the Fund to purchase and redeem creation Units. Section 17(a) generally prohibits an affiliated person of a registered investment company from purchasing from or selling to such company any security or other property. Because purchases and redemptions will be in-kind rather than cash transactions, section 17(a) may prohibit affiliated persons of the Fund from purchasing or redeeming Creation Units. Moreover, because the definition of affiliated person includes anyone owning 5% or more of an issuer's outstanding voting stock, at least one purchaser of a Creation Unit will be affiliated with the Fund so long as there are twenty or fewer holders of Creation Units.

2. Applicants contend that no useful purpose would be served by prohibiting affiliated persons from making in-kind purchases or redemptions of Creation Unites. Both the deposit procedures for in-kind purchases of shares and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all creations and redemptions, regardless of size or number. The securities to be used for the in-kind purchase or redemption will be determined by the Portfolio Deposit, which is based on the MSCI Indices. The MSCI Indices are widely publicized and not subject to manipulation by the Fund or its affiliates. Portfolio securities will be valued in the same manner as those portfolio securities currently held by the Fund and the valuation of portfolio securities will be made in an identical manner regardless of the identity of the person purchasing or redeeming. Thus, applicants believe that there will be no opportunity for affiliated persons to effect a transaction detrimental to the other shareholders. Applicants believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Fund. Accordingly, applicants believe that the requested relief meets the section 6(c) and section 17(b) standards for relief.

Applicants' Arguments

1. Applicants assert that WEBS will allow investors to have a beneficial interest in a standardized portfolio of foreign equity securities in a size comparable to a share of common stock. Applicants believe that the ability to take deposits and make redemptions in-kind will help the Index series that offer this feature to track closely the relevant foreign securities index and therefore aid in achieving the Index Series' objectives.

2. Applicants state that they will take such steps as may be necessary to avoid confusion in the public's mind between the Fund and a conventional ''open-end investment company'' or ''mutual fund,.'' In addition, applicants state that brokers will deliver a prospectus to each investor in connection with the secondary market purchases by

[2] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Securities Exchange Act of 1934. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

investors of WEBS on the AMEX. For the above reasons, applicants believe that the requested relief meets the section 6(c) standards for relief.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will not be advertised or marketed as an open-end investment company, *i.e.*, as a mutual fund offering redeemable securities. The Fund's or any Index Series' prospectus will prominently disclose that WEBS are not redeemable shares and will disclose that the owners of WEBS may acquire and tender those shares for redemption to the Fund in Creation Unit aggregations only. Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that WEBS are not redeemable and that owners of WEBS may acquire and tender those shares for redemption to the Fund in Creation Unit aggregations only.

2. The Fund will provide copies of its annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial holders of WEBS.

3. Applicants will not seek to have the Fund's registration statement declared effective until the SEC has approved such proposed rule change pursuant to rule 19b–4 under the Securities Exchange Act of 1934 as may be necessary to enable a national securities exchange to list the WEBS.

4. In addition, as long as the Fund operates in reliance on the requested order, the WEBS will be listed on a national securities exchange.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3045 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21735; 812–9900]

J.P. Morgan Index Funding Company, LLC; Notice of Application

February 6, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: J.P. Morgan Index Funding Company, LLC.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit it to sell certain preferred equity securities and use the proceeds to finance the business activities of its parent company, J.P. Morgan & Co. Incorporated (''J.P. Morgan''), and certain companies controlled by J.P. Morgan.

FILING DATE: The application was filed on December 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 4, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 60 Wall Street, New York, New York 10260–0060.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware limited liability company formed in November, 1995. Applicant's outstanding voting securities are owned by J.P. Morgan and J.P. Morgan Ventures Corporation.[1] J.P. Morgan is a holding company for a group of global subsidiaries that provide a variety of financial services to corporations and other entities. Morgan Guaranty Trust Company of New York (''Morgan Guaranty'') is a New York State chartered banking institution, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and is a subsidiary of J.P. Morgan.

2. Applicant was organized to engage in financing activities that will provide funds for use in the operations of J.P. Morgan, Morgan Guaranty, and certain of their subsidiaries (the ''Morgan Entities''). Applicant proposes to obtain funds through the offer and sale of its preferred equity securities in the United States and in overseas markets, and to lend the proceeds to the Morgan Entities.

3. Due to the nature of the capital markets, applicant may, from time to time, issue securities in amounts exceeding the amounts required by the Morgan Entities at any given time. However, at least 85% of the cash or cash equivalents raised by applicant through the sale of preferred securities will be loaned to the Morgan Entities as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents. Amounts that are not loaned to the Morgan Entities will be invested in government securities, securities of J.P. Morgan, Morgan Guaranty, or a company controlled by J.P. Morgan or Morgan Guaranty (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Before applicant issues any securities, J.P. Morgan will enter into a master guarantee agreement (the ''Guarantee Agreement'') with applicant under which J.P. Morgan will guarantee the payment of principal and dividends on the securities issued by applicant, in accordance with rule 3a–5(a)(2) as interpreted by the staff.[2] The Guarantee Agreement will give each holder of applicant's securities a direct right of action against J.P. Morgan's obligations under the Guarantee Agreement without first proceeding against applicant.

Applicant's Legal Analysis

1. Applicant requests an exemption from all provisions of the Act. The Commission has stated that it is appropriate to exempt a finance subsidiary from all provisions of the Act where the primary purpose of the finance subsidiary is to finance the business operations of its parent or other subsidiaries of its parent and where any purchaser of the finance subsidiary's securities ultimately looks

[1] Applicant's counsel has stated that J.P. Morgan Ventures Corporation is a wholly-owned subsidiary of J.P. Morgan.

[2] See Chieftain International Funding Corp., (pub. avail. Nov. 3, 1992) and Cleary, Gottlieb, Steen & Hamilton, (pub. avail. Dec. 23, 1985).

to the parent for repayment and not to the finance subsidiary.[3]

2. Rule 3a–5(b)(2)(i) in relevant part defines ''parent company'' to be a corporation, partnership, or joint venture that is not considered in investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). J.P. Morgan technically is not a ''parent company'' within the meaning of rule 3a–5(b)(2)(i) because it meets the definition of investment company in section 3(a) of the Act and is excepted by such definition by section 3(c)(6).

3. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Certain of the Morgan Entities do not fit within the technical definition of ''companies controlled by the parent company'' because they derive their non-investment status from section 3(c).

4. In the release adopting rule 3a–5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of a section 3(c) issuer, but only on a case-by-case basis upon an examination of all relevant facts. According to the adopting release, the concern was that a company may be considered a non-investment company for the purposes of the Act under section 3(c) of the Act and still be engaged primarily in investment company activities.

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant states that none of the Morgan Entities to which applicant may loan money are engaged primarily in investment company activities. In addition, if J.P. Morgan or Morgan Guaranty were themselves to issue the securities that are to be issued by applicant and use the proceeds, none of the Morgan Entities would be subject to regulation under the Act. While J.P. Morgan has chosen instead to use applicant as a financing vehicle, the Guarantee Agreement ensures that holders of applicant's securities will have direct access to J.P. Morgan's credit. Accordingly, applicant submits that the relief requested satisfies the section 6(c) standard.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall be subject to the following condition:

1. Applicant will comply with all of the provisions of rule 3a-5 under the Act, except: (a) J.P. Morgan will not meet the portion of the definition of ''parent company'' in rule 3a-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act; (b) Morgan Guaranty will not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a-5(b)(3)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (c) applicant will be permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a-5(b)(3)(i) solely because they are excluded from the definition of investment company by sections 3(c)(2), 3(c)(3), 3(c)(4), or 3(c)(6) of the Act, provided that any such entity excluded from the definition of investment company under section 3(c)(6) of the Act will not be engaged primarily, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3046 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[3] Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a–5 under the Act). Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

[Rel. No. IC–21733; 811–131]

National Bond Fund; Notice of Application

February 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: National Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 3, 1995 and amended on January 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 1, 1986, applicant registered under the Act as an investment company and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective, and applicant's initial public offering commenced, on August 29, 1986.

2. On June 30, 1993, applicant's Board of Trustees and the Board of Trustees of the Phoenix Series Fund unanimously approved an agreement and plan of reorganization (the ''Plan''), in accordance with rule 17a–8 of the Act, whereby applicant would transfer all of its assets to the High Yield Fund Series (the ''High Yield Series'') of the Phoenix Series Fund, a Massachusetts business

trust.[1] Proxy materials were filed with the SEC and were distributed to shareholders on September 30, 1993. At a special meeting held on November 18, 1993, applicant's shareholders approved the Plan.

3. On December 3, 1993 (the ''Closing Date''), applicant transferred all of its assets to the High Yield Series. Accordingly, securityholders of applicant became securityholders of the High Yield Series. In consideration for the transfer, the High Yield Series assumed all of applicant's liabilities and delivered to applicant full and fractional shares of beneficial interest of the High Yield Series equal to that number of full and fractional High Yield Series shares as determined based on the relative net asset values per share of applicant and the High Yield Series as of the close of trading of the New York Stock Exchange on the Closing Date. Applicant distributed such High Yield Series shares *pro rata* to its securityholders and simultaneously applicant's shares held by its securityholders were canceled.

4. Phoenix Investment Counsel, Inc., an affiliate of applicant, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

5. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant filed Articles of Dissolution to terminate its existence as a Maryland corporation and was dissolved on June 16, 1995.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3047 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Phoenix Series Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC—21730; 811–4131]

National Federal Securities Trust; Notice of Application

February 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: National Federal Securities Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 3, 1995 and amended January 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On October 17, 1984, applicant registered under the Act as an investment company, and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective on November 21, 1984, and applicant's initial public offering commenced on December 10, 1984.

2. On June 30, 1993, applicant's Board of Trustees and the Board of Trustees of the Phoenix Series Fund unanimously approved an agreement and plan of reorganization (the ''Plan''), in accordance with rule 17a–8 of the Act, whereby applicant would transfer all of its assets to the U.S. Government Securities Fund Series (the ''Government Series'') of the Phoenix Series Fund, a Massachusetts business trust.[1] Proxy materials were filed with the SEC and were distributed to shareholders on September 3, 1993. At a special meeting held on November 4, 1993, applicant's shareholders approved the Plan.

3. On December 3, 1993 (the ''Closing Date''), applicant transferred all of its assets to the Government Series. Accordingly, securityholders of applicant became securityholders of the Government Series. In consideration for the transfer, the Government Series assumed all of applicant's liabilities and delivered to applicant full and fractional shares of beneficial interest of the Government Series equal to that number of full and fractional Government Series shares as determined based on the relative net asset values per share of applicant and the Government Series as of the close of trading of the New York Stock Exchange on the Closing Date. Applicant distributed such Government Series shares *pro rata* to its securityholders and simultaneously applicant's shares held by its securityholders were canceled.

4. Phoenix Investment Counsel, Inc., an affiliate of applicant, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

5. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant has filed documents necessary to terminate its existence as a Massachusetts business trust.

[1] Applicant and the Phoenix Series Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3048 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21732; 811–2660]

National Securities Tax Exempt Bonds, Inc.; Notice of Application

February 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: National Securities Tax Exempt Bonds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 3, 1995 and amended on January 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Maryland corporation. On September 6, 1976, applicant registered under the Act as an investment company and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective, and applicant's initial public offering commenced, on November 5, 1976.

2. On June 30, 1993, applicant's Board of Directors and the Board of Trustees of the Phoenix Multi-Portfolio Fund unanimously approved an agreement and plan of reorganization (the ''Plan''), in accordance with rule 17a–8 of the Act, whereby applicant would transfer all of its assets and liabilities to the Phoenix Tax-Exempt Bond Portfolio (the ''Tax-Exempt Portfolio'') of the Phoenix Multi-Portfolio Fund, a Massachusetts business trust.[1] Proxy materials were filed with the SEC and were distributed on September 16, 1993. At a special meeting held on November 4, 1993, applicant's shareholders approved the Plan.

3. On November 12, 1993 (the ''Closing Date''), applicant transferred all of its assets to the Tax-Exempt Portfolio. Accordingly, securityholders of applicant became securityholders of the Tax-Exempt Portfolio. In consideration for the transfer, the Tax-Exempt Portfolio assumed all of applicant's liabilities and delivered to applicant full and fractional shares of beneficial interest of the Tax-Exempt Portfolio equal to that number of full and fractional Tax-Exempt Portfolio shares as determined based on the relative net asset values per share of applicant and the Tax-Exempt Portfolio as of the close of trading of the New York Stock Exchange on the Closing Date. Applicant distributed such Tax-Exempt Portfolio shares *pro rata* to its securityholders and simultaneously applicant's shares held by its securityholders were canceled.

4. Phoenix Investment Counsel, Inc., an affiliate of applicant, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

5. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant filed Articles of Dissolution to terminate its existence as a Maryland corporation and was dissolved on June 16, 1995.

[1] Applicant and the Phoenix Multi-Portfolio Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3049 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21731; 811–4725]

National Total Return Fund; Notice of Application

February 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: National Total Return Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 3, 1995 and amended on January 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One American Row, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On July 1, 1986, applicant registered under the Act as an investment company, and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective, and applicant's initial public offering commenced, on August 29,1986. The registration statement was filed in anticipation of a reorganization of applicant, a series of National Securities Funds. Applicant is the successor to National Securities Funds, whose registration statement was originally filed on August 17, 1945.

2. On June 30, 1993, applicant's Board of Trustees and the Board of Directors of the Phoenix Total Return Fund, Inc. (''PTRF'') unanimously approved an agreement and plan of reorganization (the ''Plan''), in accordance with rule 17a–8 of the Act, whereby applicant would transfer all of its assets to PTRF, a Massachusetts corporation.[1] Proxy materials were filed with the SEC and were distributed to shareholders on September 3, 1993. At a special meeting held on November 11, 1993, applicant's shareholders approved the Plan.

3. On December 3, 1993 (the ''Closing Date''), applicant transferred all of its assets to PTRF. Accordingly, securityholders of applicant became securityholders of PTRF. In consideration for the transfer, PTRF assumed all of applicant's liabilities and delivered to applicant full and fractional shares of common stock of PTRF equal to that number of full and fractional PTRF shares as determined based on the relative net asset values per share of applicant and PTRF as of the close of trading of the New York Stock Exchange on the Closing Date. Applicant distributed such PTRF shares *pro rata* to its securityholders and simultaneously applicant's shares held by its securityholders were canceled.

[1] Applicant and PTRF may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

4. Phoenix Investment Counsel, Inc., an affiliate of applicant, paid all of the direct and indirect expenses of the reorganization, including any brokerage fees relating to transactions resulting from the reorganization.

5. At the time of the application, applicant had no secruityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant has filed documents necessary to terminate its existence as a Massachusetts business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3050 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Rockwell International Corporation, Common Stock, $1 Par Value; its $4.75 Convertible Preferred Stock, Series A) File No. 1–1035

February 6, 1996.

Rockwell International Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'') and Philadelphia Stock Exchange, Inc. (''Phlx'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, there is low trading volume on these exchanges (in 1994, 471,696 on the BSE and 354,525 on the Phlx compared to 71,562,300 on the NYSE in the same year) and the Company has a desire to reduce expenses and administrative and reporting burdens.

Any interested person may, on or before February 28, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–3051 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36811; File No. SR–DTC–95–15]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Processing Securities With Indexed Principal Features Through the Receiver Authorized Delivery Facility

February 5, 1996.

On August 23, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–95–15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on November 6, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC will require transactions in securities issued under a Money Market Instrument (''MMI'') program having an indexed principal feature[3] and settling in DTC's sameday funds settlement system to be directed to DTC's Receiver Authorized Delivery facility (''RAD'').[4] RAD will require mandatory authorization from receivers of securities having an

[1] 15 U.S.C. § 78s(b) (1) (1988).

[2] Securities Exchange Act Release No. 36437 (October 30, 1995), 60 FR 56081.

[3] A security with an indexed principal feature is one having its principal amount directly derived by reference to a currency, composite currency, commodity, or other financial index.

[4] For a description of DTC's RAD facility, refer to Securities Exchange Act Release Nos. 25886 (July 8, 1988), 53 FR 26698 [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of the RAD facility) and 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–07] (order granting accelerated approval of proposal to implement a $15 million per transaction minimum threshold to utilize the RAD facility for approval or cancellation of deliveries).

indexed principal feature before DTC will process the transaction.[5]

Because the value of MMI securities with an indexed principal feature may change dramatically in a short period of time, DTC participants desire to have a mechanism by which they can determine whether a particular MMI issue has this feature before accepting a delivery. DTC determined that it could provide its participants the service they desired by processing these securities types through DTC's existing RAD facility and by revising its CUSIP descriptions to include a unique identifier that will indicate whether a particular issue has an indexed principal feature. In this way, DTC participants immediately will be able to tell from an issue's special CUSIP identifier that it has an index principal feature and then take appropriate action to affirmatively authorize or reject the delivery of the securities. These procedures should reduce the likelihood that a DTC participant inadvertently will complete a purchase transaction involving this type of security without full knowledge of its indexed principal feature.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed 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 before the new procedures will give DTC participants better information as to whether a particular issue of securities has an indexed principal feature. This should help DTC participants to avoid inadvertently completing a purchase transaction in a securities issue having an indexed principal feature when such a purchase is not intended.

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–95–15) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–3042 Filed 2–9–96; 8:45 am]

BILLING CODE 8010–01–M

[5] Although these transactions will be directed to DTC's existing RAD facility, such transactions will be subject to a separate approval and reporting process.

[6] 15 U.S.C. § 78q–1 (b) (3) (F) (1988).

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0223]

ABN Capital (USA) Inc.; Notice of Issuance of a Small Business Investment Company License

On Friday, October 27, 1995, a notice was published in the Federal Register (Vol. 60, No. 208, FR 55076) stating that an application had been filed by ABN AMRO Capital (USA) Inc., at 135 South LaSalle Street, Chicago, IL 60674, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) for a license to operate as a small business investment company.

Interested parties were given until close of business Monday, November 13, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0233 on January 31, 1996, to ABN AMRO Capital Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 5, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–2934 Filed 2–9–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Published Social Security Acquiescence Rulings

AGENCY: Social Security Administration.

ACTION: Notice of Published Social Security Acquiescence Rulings.

SUMMARY: Social Security Acquiescence Rulings (ARs) explain the manner in which the Social Security Administration (SSA) applies holdings of the United States Courts of Appeals that conflict with SSA's interpretation of a provision of the Social Security Act (the Act) or regulations when adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act. This notice lists ARs and rescissions of ARs that were published in the Federal Register from January 11, 1990, through December 31, 1995. In addition, we have included Federal Register references for three prior notices of cumulative listings of ARs. The purpose of this notice is to assist individuals in finding ARs.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Even though we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), SSA's regulations were amended on January 11, 1990, to provide that ARs are to be published in their entirety in the Federal Register under authority of the Commissioner of Social Security (20 CFR 422.406(b)(2)). An AR explains how SSA will apply a holding of a United States Court of Appeals that is at variance with SSA's interpretation of the Act or regulations in adjudicating claims under title II and title XVI of the Act and part B of the Black Lung Benefits Act.

Although regulations and ARs are published in the Federal Register, only the regulations are subsequently published in the Code of Federal Regulations (CFR). The CFR is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. Consequently, the CFR may not state the circuitwide standard in effect when we have determined that the holding in a decision of a United States Court of Appeals is at variance with our national interpretation. Therefore, we are publishing this listing to assist individuals who need to reference ARs in effect as a result of holdings of the United States Courts of Appeals.

If an AR is later rescinded as obsolete, we will publish a notice in the Federal Register to that effect, as provided for in 20 CFR 404.985(e), 410.670c(e), or 416.1485(e). If we decide to relitigate an issue covered by an AR, as provided for by 20 CFR 404.985(c), 410.670c(c), or 416.1485(c), we will publish a notice in the Federal Register stating that we will apply our interpretation and not the standard expressed in the AR, and explain why we have decided to relitigate the issue. In either of these situations, we will include the

information in notices of published ARs such as this one.

This notice contains a listing of all ARs published under the requirements of 20 CFR 422.406(b)(2) during the period January 11, 1990, through December 31, 1995. The listing includes the AR number, title, publication date and the Federal Register reference number. This notice also lists ARs which were rescinded during this period. We anticipate publishing a notice each year that will list similar information.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: February 6, 1996.

Walter H. Burton, Jr.

Social Security Administration

Published Social Security Acquiescence Rulings

Published cumulative lists of ARs relating to claims under title II and title XVI of the Social Security Act and part B of the Black Lung Benefits Act were issued for ARs published prior to January 11, 1990.

1. The first notice announcing 14 ARs, issued during the period from January 23, 1986, through April 30, 1986, was published in the Federal Register on June 4, 1986 (51 FR 20354).

2. A second notice announcing 12 additional ARs, issued during the period from May 20, 1986, through March 31, 1987, was published in the Federal Register on August 7, 1987 (52 FR 29941).

3. A third notice announcing 11 more ARs, issued during the period from May 1, 1987, through November 14, 1988, the withdrawal of one AR which was issued earlier, and the withdrawal of one of the ARs issued during this period was published in the Federal Register on July 10, 1990 (55 FR 28302).

This notice lists ARs published in the Federal Register including the period from January 11, 1990, through December 31, 1995. It includes three ARs which were issued earlier, rescinded and replaced by revised ARs under their original AR number. It also includes the outright rescission of five ARs issued during this period, and the outright rescission of 12 ARs issued earlier. One AR published during this period was revised. Two ARs published during this period required correction. The correction notices are also discussed in this notice. (The parenthetical number that follows each AR number refers to the United States judicial circuit involved.)

Acquiescence Rulings

AR 86-2R(2) *Rosenberg* v. *Richardson*, 538 F.2d 487 (2d Cir. 1976); *Capitano* v. *Secretary of HHS*, 732 F.2d 1066 (2d Cir. 1984)—Entitlement of a Deemed Widow When a Legal Widow is Entitled on the Same Earnings Record—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28527.

Note: The original AR for the Second Circuit Court of Appeals' holding in *Rosenberg* and *Capitano* (AR 86-2(2)), issued January 23, 1986, was rescinded and replaced by this revised AR.

AR 86-18R(5) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28529 as AR 860918R(5).

Note: The original AR for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86-18(5)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 86-19R(11) *Woodson* v. *Schweiker*, 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28524.

Note: The original AR applicable in the Eleventh Circuit for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86-19(11)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 90-1(9) *Paxton* v. *Secretary of Health and Human Services*, 856 F.2d 1352 (9th Cir. 1988)—Treatment of a Dependent's Portion of an Augmented Veterans Benefit Paid Directly To a Veteran—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28946. Rescinded—See section on Rescissions in this notice.

AR 90-2(2) *Ruppert* v. *Bowen*, 871 F.2d 1172 (2d Cir. 1989)—Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28947.

AR 90-3(4) *Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987)—Use of Vocational Expert or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28949.

AR 90-4(4) *Culbertson* v. *Secretary of Health and Human Services*, 859 F.2d 319 (4th Cir. 1988); *Young* v. *Bowen*, 858 F.2d 951 (4th Cir. 1988)—Waiver of Administrative Finality in Proceedings Involving Unrepresented Claimants Who Lack the Mental Competence to Request Administrative Review—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28943.

AR 90-5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38400. Rescinded—See section on Rescissions in this notice.

AR 90-6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied*, April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38398. Rescinded—See section on Rescissions in this notice.

AR 90-7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38402. Rescinded—See section on Rescissions in this notice.

AR 91-1(5) *Lidy* v. *Sullivan*, 911 F.2d 1075 (5th Cir. 1990)—Right to Subpoena an Examining Physician for Cross-examination Purposes—Titles II and XVI of the Social Security Act.

Published: December 31, 1991, at 56 FR 67625 as AR 91-X(5).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 91-1(5).

AR 92-1(3) *Mazza* v. *Secretary of Health and Human Services*, 903 F.2d 953 (3d Cir. 1990)—Order of Effectuation in Concurrent Application Cases (Title II/Title XVI).

Published: January 10, 1992, at 57 FR 1190 as AR 91-X(3).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 92-1(3).

AR 92-2(6) *Difford* v. *Secretary of Health and Human Services*, 910 F.2d 1316 (6th Cir. 1990), *reh'g denied*, February 7, 1991—Scope of Review on Appeal in a Medical Cessation of Disability Case—Title II of the Social Security Act.

Published: March 17, 1992, at 57 FR 9262.

AR 92-3(4) *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Published: March 10, 1992, at 57 FR 8463.

AR 92-4(11) *Bloodsworth* v. *Heckler*, 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge (ALJ) Decision.

Published: April 8, 1992, at 57 FR 11961.

AR 92-5(9) *Quinlivan* v. *Sullivan*, 916 F.2d 524 (9th Cir. 1990)—Meaning of the Term ''Against Equity and Good Conscience'' in the Rules for Waiver of Recovery of an Overpayment—Titles II and XVI of the Social Security Act; Title IV of the Federal Mine Safety and Health Act of 1977.

Published: June 22, 1992, at 57 FR 27783.

AR 92-6(10) *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before 12 Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Published: September 17, 1992, at 57 FR 43007.

AR 92-7(9) *Gonzalez* v. *Sullivan*, 914 F.2d 1197 (9th Cir. 1990)—Effect of Initial Determination Notice Language on the Application of Administrative Finality—Titles II and XVI of the Social Security Act.

Published: September 30, 1992, at 57 FR 45061.

AR 93-1(4) *Branham* v. *Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers* v. *U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Published: April 29, 1993, at 58 FR 25996.

Note: The original AR for the Fourth Circuit Court of Appeals' holding in *Branham* and *Flowers* (AR 92-3(4)), issued March 10, 1992, was revised to reflect a regulatory change regarding the IQ Listing range. There were no other substantive changes to this AR.

AR 93-2(2) *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988)—Determination of Whether an Individual With a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period—Title II of the Social Security Act.

Published: May 17, 1993, at 58 FR 28887.

AR 93-3(6) *Akers* v. *Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40662.

AR 93-4(2) *Condon and Brodner* v. *Bowen*, 853 F.2d 66 (2d Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40663.

AR 93-5(11) *Shoemaker* v. *Bowen*, 853 F.2d 858 (11th Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40665.

AR 93-6(8) *Brewster on Behalf of Keller* v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Published: August 16, 1993, at 58 FR 43369. Rescinded—See section on Rescissions in this notice.

AR 94-1(10) *Wolfe* v. *Sullivan*, 988 F.2d 1025 (10th Cir. 1993)—Contributions To Support re: Posthumous Illegitimate Child—Title II of the Social Security Act.

Published: June 27, 1994, at 59 FR 33003.

AR 94-2(4) *Lively* v. *Secretary of Health and Human Services*, 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: July 7, 1994, at 59 FR 34849.

AR 95-1(6) *Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Published: May 4, 1995, at 60 FR 22091.

AR 95-2(9) *Hodge* v. *Shalala*, 27 F.3d 430 (9th Cir. 1994)—Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law—Title II of the Social Security Act.

Published: July 12, 1995, at 60 FR 35987.

Rescissions Without Replacement ARs

AR 86-1(9) *Summy* v. *Schweiker*, 688 F.2d 1233 (9th Cir. 1982)—Third party payments for medical care or services—Title XVI of the Social Security Act.

Notice of Rescission Published: July 5, 1994, at 59 FR 34444.

AR 86-6(3) *Aubrey* v. *Richardson*, 462 F.2d 782 (3d Cir. 1972); *Shelnutt* v. *Heckler*, 723 F.2d 1131 (3d Cir. 1983)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86-7(5) *Autrey* v. *Harris*, 639 F.2d 1233 (5th Cir. 1981); *Wages* v. *Schweiker*, 659 F.2d 59 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86-8(6) *Johnson* v. *Califano*, 607 F.2d 1178 (6th Cir. 1979)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86-9(9) *Secretary of Health, Education and Welfare* v. *Meza*, 386 F.2d 389 (9th Cir. 1966); *Gardner* v. *Wilcox*, 370 F.2d 492 (9th Cir. 1966)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86-10(10) *Edwards* v. *Califano*, 619 F.2d 865 (10th Cir. 1980)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86-11(11) *Autrey* v. *Harris*, 639 F.2d 1233 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 87-1(6) *Webb* v. *Richardson*, 472 F.2d 529 (6th Cir. 1972)—Attorneys' Fees - Single Fee, Not to Exceed 25 Percent of Past-Due Benefits, Set by Tribunal Which Ultimately Upholds the Claim.

Notice of Rescission Published: March 3, 1995, at 60 FR 11977.

AR 87-3(9) *Hart* v. *Bowen*, 799 F.2d 567 (9th Cir. 1986)—Current Market

Value of an Installment Sales Contract as an Excess Resource.

Notice of Rescission Published: February 9, 1995, at 60 FR 7782.

AR 87-5(3) *Velazquez* v. *Heckler,* 802 F.2d 680 (3d Cir. 1986)—Consideration of Vocational Factors in Past Work Determinations.

Notice of Rescission Published: July 16, 1990, at 55 FR 28943.

AR 88-5(1) *McCuin* v. *Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987)—Reopening by the Appeals Council of Decisions of Administrative Law Judges under Titles II and XVI of the Social Security Act.

Notice of Rescission Published: February 23, 1994, at 59 FR 8650.

AR 88-7(5) *Hickman* v. *Bowen*, 803 F.2d 1377 (5th Cir. 1986)—Evaluation of Loans of In-Kind Support and Maintenance for Supplemental Security Income Benefit Calculation Purposes.

Notice of Rescission Published: September 8, 1992, at 57 FR 40918.

AR 90-1(9) *Paxton* v. *Secretary of Health and Human Services*, 856 F.2d 1352 (9th Cir. 1988)—Treatment of a Dependent's Portion of an Augmented Veterans Benefit Paid Directly To a Veteran—Title XVI of the Social Security Act.

Notice of Rescission Published: November 17, 1994, at 59 FR 59416.

AR 90-5(2) *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 90-6(1) *Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), *reh'g denied,* April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23591.

AR 90-7(9) *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990)— Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 93-6(8) *Brewster on Behalf of Keller* v. *Sullivan*, 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

[FR Doc. 96–3070 Filed 2–9–96; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from CSX Transportation (CSXT), Burlington Northern Santa Fe and New York Air Brake Corporation (NYAB) requests for a waiver of compliance with a requirement of Federal rail safety standards. The petitions are described below, including the regulatory provisions involved and the nature of the relief being requested.

CSX Transportation (CSXT) Burlington Northern Santa Fe (BNSF) and New York Air Brake Corporation (NYAB) Waiver Petition Docket Number H–95–3

The CSXT, BNSF and NYAB individually seek waivers of compliance with certain provisions of the Locomotive Safety Regulations (Title 49 CFR Part 229). CSXT, BNSF and NYAB are each requesting a temporary waiver of compliance with § 229.29, for all of their locomotives equipped with the New York Air Break Company/Knorr Brake Corporation Computer Controlled Brake (CCB). This includes all locomotives currently built or on order plus any that may be ordered for delivery up to month 48 of the test period.

The National Railroad Passenger Corporation (Amtrak) has also petitioned the FRA for a similar waiver. This was published in the Federal Register on July 31, 1995 (Vol. 60, No. 146, Page 39069). Since the three petitions apply to the same type of brake equipment and for the same time interval, FRA is combining the three petitions under Docket Number H–95–3.

Section 229.29 stipulates that all brake valves must be cleaned, tested and inspected every 736 calendar days. On January 29, 1985, FRA published a notice granting approval for the 26–L type air brake equipment to be cleaned, inspected and tested every 1104 calendar days (Vol. 50, No. 19, Page 3910). The petition requests that the CCB brake valves be maintained on a 5-year test interval.

The CCB brake equipment combines certain pneumatic features of the 26L brake with microprocessor controls. The CCB pneumatic and electro-pneumatic devices rely on poppet valve and seat technology which has been proven in service in other Knorr brake equipment.

The CCB system consists of a console desk controller, an electronic control system unit and a pneumatic interface unit. The electronic control system unit contains the logic processor (computer), power supply, input/output interfaces, diagnostic program and brake operation programs. The desk console controller contains the standard automatic and independent brake operating handles. The console controller also contains a direct connection to brake pipe which is utilized for emergency brake applications. The pneumatic interface unit contains the connections to the standard train line and locomotive multiple unit pneumatic lines. The pneumatic unit contains all of the devices which are driven by the electronic control system to perform all functions currently carried out by the 26–L brake system.

The brake system includes advanced diagnostics and a self test program. The self test program is manually initiated and provides a test of all electronic and pneumatic interface functions. Any faults detected are displayed on the system unit. In-service faults are detected and stored in nonvolatile memory. The railroad states that safety is enhanced by the CCB Equipment in (1) Constant vigilance for deviation from performance by the microcomputer, (2) the control of faults to a known safe condition, and (3) the capability of warning the operator of a fault condition. These features are not available in the existing 26–L Brake Equipment. Life of all components are rated in excess of 5-years.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify ERA, in writing, before and end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, ERA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201,

Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on February 7, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–3005 Filed 2–9–96; 8:45 am]

BILLING CODE 4190–06–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 12, 1996, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on February 22, 1996. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by March 4, 1996, to the address given below. If sufficient time is available, questions received after the March 4 date will be answered at the meeting in the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by March 4 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Royce Hotel-Detroit Metro Airport, 31500 Wick Road, Romulus, Michigan 48174. Suggestions for specific R&D topics as described below and questions for the March 12, 1996, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This twelfth meeting in the series will be held on March 12, 1996.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on February 22, 1996. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers listed elsewhere in this notice. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the March 12 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations.

Specific R&D topic is:
- On-line tracking system for NHTSA's research projects.

Specific Crashworthiness R&D topics are:
- Improved frontal crash protection (program status, problem identification, offset testing),
- Advanced glazing research,
- Vehicle aggressivity and fleet compatibility,
- Upgrade side crash protection,
- Upgrade seat and occupant restraint systems,
- Child safety research (ISOFIX),
- Child restraint/air bag interaction (CRABI) dummy testing,
- Electric and alternate fuel vehicle safety,
- Truck crashworthiness/occupant protection,
- Highway traffic injury studies,
- Head and neck injury research,
- Lower extremity injury research,
- Thorax injury research,
- Human injury simulation and analysis,
- Refinements to the Hybrid III dummy, and
- Crash test dummy component development.

Specific Crash Avoidance R&D topics are:
- Truck tire traction,
- Portable data acquisition system for crash avoidance research (DASCAR),
- Systems to enhance EMS response (automatic collision notification),
- Vehicle motion environment data collection system,
- Crash causal analysis,
- Human factors guidelines for crash avoidance warning devices,
- Longer combination vehicle safety,
- Drowsy driver monitoring,
- Driver workload assessment,
- Pedestrian detection devices for school bus safety,
- Performance guidelines for ITS systems (approach),
- Variable dynamics test vehicle,
- Engineering description of precrash events,
- Preliminary rearend collision avoidance system guidelines,
- Preliminary road departure collision avoidance system guidelines,
- Preliminary intersection collision avoidance system guidelines, and
- Preliminary lane change/merge collision avoidance system guidelines.

Specific National Center for Statistics and Analysis topic is:
- Status and plans for calendar year 1996 for the National Accident Sampling System Crashworthiness Data System (NASS CDS).

Separately, questions regarding research projects that have been submitted in writing not later than close of business on March 4, 1996, will be answered. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA's Technical Reference Division, Room 5108, 400 Seventh St., SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA's Technical Reference Division. The Technical Reference Division is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on 202–366–4862 by close of business March 6, 1996.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930

Issued: February 7, 1996.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 96–3006 Filed 2–9–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[Finance Docket No. 32846]

Soo Line Railroad Company—Trackage Rights Exemption—CMC Heartland Partners

CMC Heartland Partners (CMC) has agreed to grant local and overhead trackage rights to Soo Line Railroad Company (Soo) over approximately 2.10 miles of its rail line between milepost 96.76 near Richards Street and milepost 97.07 at the Western edge of North Booth Street (near East Locust Street), including the trackage known as the Snake Line, in Milwaukee County, WI. Under the trackage rights agreement, Soo will obtain the right to continue operations over CMC's track in Milwaukee, WI. The trackage rights were scheduled to become effective on January 4, 1996.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly 10505(d)] may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423 and served on: Larry Starns, 1000 Soo Line Building, 105 South Fifth Street, P.O. Box 530, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: February 6, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–3040 Filed 2–9–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32847]

Soo Line Railroad Company—Trackage Rights Exemption—CMC Heartland Partners

CMC Heartland Partners (CMC) has agreed to grant local and overhead trackage rights to Soo Line Railroad Company (Soo) over approximately 1.04 miles of its rail line between milepost 3.50, near Diversey Parkway, and milepost 2.57, near Clybourn Avenue, in Cook County, IL.

Under the trackage rights agreement, Soo will obtain the right to continue to operate its trains over CMC's track in Chicago, IL. The trackage rights were scheduled to become effective on January 4, 1996, the effective date of the exemption.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly 10505(d)] may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Larry D. Starns, 1000 Soo Line Building, 105 South Fifth Street, P.O. Box 530, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: February 6, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–3041 Filed 2–9–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act.

[2] The line segment is one of the lines of railroad owned and operated by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee Road). CMC subsequently became the corporate successor of the reorganized debtor order in *The Milwaukee Road, Inc. Authorized to Use Tracks And/Or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilive, Trustee),* Service Order No. 1500 (ICC served Jan. 17, 1986), although an ongoing dispute existed between CMC and Soo as to the amount of compensation owed by Soo for use or possible purchase of the line. On July 20, 1995, the United States District Court for the Northern District of Illinois, Eastern Division ordered Soo and CMC to enter into a contractual relationship to resolve the dispute and established the values which are reflected in the trackage rights agreement dated November 20, 1995.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act.

[2] On January 3, 1996, the United Transportation Union (UTU) filed a petition requesting that the verified notice filed by Soo on December 28, 1995, be rejected, alleging that CMC is a noncarrier, and, therefore, does not qualify for the class exemption under 49 CFR 1180.2(d)(7). Soo replied on January 30, 1996.

CMC is the corporate successor of the reorganized debtor railroad, Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee). By the Asset Purchase Agreement of April 6, 1984, Soo acquired from CMC most of the operating property and core assets of the Milwaukee; but CMC retained this line segment. At the time, abandonment proceedings initiated by the Trustee were pending in the United States District Court for the Northern District of Illinois, Eastern Division (Court). Soo continued to operate the line under a service order in *The Milwaukee Road, Inc. Authorized to Use Tracks And/Or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilive, Trustee),* Service Order No. 1500 (ICC served Jan. 17, 1986), although an ongoing dispute existed between CMC and Soo as to the compensation owed Soo for use or possible purchase of the line. On July 20, 1995, the Court ordered Soo and CMC to enter into a contractual relationship to resolve the dispute and established the values for compensation and billing.

Soo states that the Court in its various decisions has uniformly referred to the rights acquired by Soo as trackage rights. It also states that CMC's filing of abandonment applications with respect to lines of railroad which were not conveyed to Soo under the asset purchase agreement, the Interstate Commerce Commission's actions in these proceedings, and UTU's objections to those abandonments demonstrate that all parties have consistently recognized that CMC's rail property is subject to the regulatory mandate established by Subtitle IV of Title 49 of the United States Code and subject to regulatory oversight with respect to railroad line abandonments.

In this case, Soo's trackage rights, which will permit Soo's operation over CMC's rail property, are properly filed under the class exemption procedures under 49 CFR 1180.2(d)(7). Therefore, UTU's petition to reject the notice is denied.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0068.
Form Number: CF–28.
Type of Review: Extension.
Title: Request for Information.
Description: The CF–28, ''Request for Information'', is used to request additional information from importers if sufficient information is not provided on the invoice or entry documentation for Customs to carry out their responsibilities.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Respondent: 33 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 40,480 hours.
Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–2992 Filed 2–9–96; 8:45 am]
BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1477.
Regulation ID Number: EE–34–95 NPRM and Temporary.
Type of Review: Extension.
Title: Notice of Significant Reduction in the Rate of Future Benefit Accrual.
Description: In order to protect the rights of participants in qualified pension plans, plan administrators must provide notice to plan participants and other parties, if the plan is amended in a particular manner. No government agency receives the information.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 3,000.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 15,000 hours.

OMB Number: 1545–1478.
Regulation ID Number: INTL–9–95 NPRM and Temporary.
Type of Review: Extension.
Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.
Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the new regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 10 hours.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–2991 Filed 2–9–96; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 5, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0078.
Form Number: ATF F 1533 (5000.18).
Type of Review: Extension.
Title: Consent of Surety.
Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion and Other (with application and permit change).
Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512–0100.
Form Number: ATF F 1740.1 and ATF F 1740.2.
Type of Review: Extension.
Title: Environment Information (ATF F 1740.1); and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341(a).
Description: ATF F 1740.1 and 1740.2 implement regulations of the Clean Water Act and the National Environmental Policy Act (NEPA). The

NEPA authorizes ATF through ATF F 1740.1 to require a license or permit application to state the location of existing or proposed activities concerned with land, air pollution, water and activities related to ATF.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,400 hours.

OMB Number: 1512–0216.

Form Number: ATF F 5120.17.

Type of Review: Extension.

Title: Report of Wine Premises Operations.

Description: Report is used to monitor wine operations, insure collection of wine tax revenue, and insure wine is produced in accordance with law and regulations. Report also provides raw data for ATF's monthly statistical release on wine.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,722.

Estimated Burden Hours Per Respondent: 1 hour, 6 minutes.

Frequency of Response: Monthly and Annually.

Estimated Total Reporting Burden: 10,364 hours.

OMB Number: 1512–0220.

Form Number: ATF F 5170.4.

Type of Review: Extension.

Title: Application for Importer's and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.

Description: Form 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcoholic beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,300.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,900 hours.

OMB Number: 1512–0418.

Form Number: ATF F 5000.12.

Type of Review: Extension.

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

Description: Application to practice before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the qualification of applicants in order to assure only competent, reputable persons are authorized to represent claimants.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (initial application and renewal every 5 years).

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–2990 Filed 2–9–96; 8:45 am]

BILLING CODE 4810–31–P

[Treasury Order Number 105–13]

Temporary Arrangements for Functions Relating to Enforcement, Authority Delegation

Pursuant to the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and notwithstanding Treasury Order (TO) 101–05 (dated May 4, 1995), it is ordered that the following arrangements shall be temporarily in effect with respect to enforcement functions.

1. All duties and powers formerly carried out by the Under Secretary (Enforcement) shall be carried out by the Deputy Assistant Secretary (Law Enforcement).

2. Those officials subject to the supervision of the Under Secretary (Enforcement) or Assistant Secretary (Enforcement) pursuant to TO 101–05, shall report to the Deputy Assistant Secretary (Law Enforcement).

3. The Deputy Assistant Secretary (Law Enforcement) shall report to the Deputy Secretary.

4. *Redelegation.* The duties and powers assigned by this Order may be redelegated. Any such redelegation shall be in writing.

5. *Effective Date.* The foregoing arrangements shall be effective at the close of business, February 5, 1996.

6. *Cancellation.* This temporary Order shall terminate without any further action when a new Under Secretary (Enforcement) or Assistant Secretary (Enforcement) executes the oath of office, whichever may occur first.

Dated: February 5, 1996.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 96–2989 Filed 2–9–96; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet March 14–15, 1996, at the Disabled American Veterans National Service and Legislative Headquarters, 807 Maine Avenue, SW., Washington, DC. The Meeting is scheduled from 8 a.m.–4:30 p.m. on March 14 and from 8 a.m.–12 p.m. on March 15.

The NAC consists of fifty six national organizations and advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC Annual Meetings. Business topics for the Executive Committee meeting include: VAVS program progress ince the 1995 NAC Annual Meeting; 1996 and 1997 NAC Annual Meeting planning, process recommendations pending NAC approval at the 1996 Annual Meeting; VAVS 50th anniversary commemoration planning; and subcommittee reports.

The meeting is open to the public. Individuals interested in attending are encouraged to contract Mr. Jim Mayer, Administrative Officer, Voluntary Service Office (162), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–7405.

Dated: February 1, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–2949 Filed 2–9–96; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 61, No. 29
Monday, February 12, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, February 15, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 8, 1996.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 96–3121 Filed 2–8–96; 10:38 am]

BILLING CODE 6210–01–P

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: February 14, 1996 10 a.m.

PLACE: 888 First Street, NE., Room 2C, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary. Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 646th Meeting—February 14, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–401, 016, Indiana Michigan Power Company
CAH–2.
Docket# P–2287, 005, Public Service Company of New Hampshire
Other#S P–2288, 006, Public Service Company of New Hampshire
P–2300, 005, James River-New Hampshire Electric, Inc.
P–2311, 005, James River-New Hampshire Electric, Inc.
P–2326, 005, James River-New Hampshire Electric, Inc.
P–2327, 006, James River-New Hampshire Electric, Inc.
P–2422, 007, James River-New Hampshire Electric, Inc.
CAH–3.
Docket# P–5772, 004, City of Augusta, Georgia
Other#S P–746, 000, City of Augusta, Georgia
CAH–4.
Docket# P–349, 030, Alabama Power Company
CAH–5.
Docket# P–11430, 000, Northern Wasco County People's Utility District
Other#S P–11462, 000, Public Utility District No. 1 Klickitat County, Washington

Consent Agenda—Electric

CAE–1.
Docket# ER95–1258, 000, Idaho Power Company
CAE–2.
Docket# ER96–333, 000, Portland General Electric Company
CAE–3.
Docket# ER96–705, 000, Southern Indiana Gas & Electric Company
CAE–4.
Docket# ER95–1474, 000, Wisconsin Electric Power Company
Other#S EL95–61, 000, Wisconsin Electric Power Company
ER94–1625, 000, Wisconsin Electric Power Company
ER95–264, 000, Wisconsin Electric Power Company
ER95–1084, 000, Wisconsin Electric Power Company
CAE–5.
Omitted
CAE–6.
Docket# ER93–540, 000, American Electric Power Service Corporation
CAE–7.
Docket# ER94–1090, 000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
Other#S ER94–1113, 000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
ER94–1402, 000, Cenergy, Inc.
CAE–8.
Omitted
CAE–9.
Docket# ER94–475, 006, Wisconsin Power and Light Company
Other#S EL96–29, 000, Wisconsin Power and Light Company
ER94–108, 006, Wisconsin Power and Light Company
ER95–1510, 001, Wisconsin Power and Light Company
CAE–10.
Docket# ER95–1468, 001, Southern Company Services, Inc.
Other#S ER95–976, 001, Southern Energy Marketing, Inc.
CAE–11.
Docket# EL96–7, 000, Puget Sound Power & Light Company
CAE–12.
Docket# EL95–42, 000, Black Hills Corporation V. Pacificorp
CAE–13.
Docket# EL95–46, 000, Laidlaw Gas Recovery Systems, Inc. and Coyote Canyon Landfill Gas Power Plant
Other#S QF88–389, 001, Laidlaw Gas Recovery Systems, Inc. and Coyote Canyon Landfill Gas Power Plant

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP95–396, 003, Tennessee Gas Pipeline Company
Other#S RP95–396, 004, Tennessee Gas Pipeline Company
RP95–396, 005, Tennessee Gas Pipeline Company
RP95–396, 006, Tennessee Gas Pipeline Company
CAG–2.
Docket# RP96–118, 000, Eastern Shore Natural Gas Company
CAG–3.
Omitted
CAG–4.
Docket# RP89–161, 034, ANR Pipeline Company
CAG–5.
Docket# RP95–197, 005, Transcontinental Gas Pipe Line Corporation
CAG–6.
Docket# RP95–408, 000, Columbia Gas Transmission Corporation
CAG–7.
Docket# RP96–4, 001, Transcontinental Gas Pipe Line Corporation
CAG–8.
Docket# RP96–17, 000, Florida Gas Transmission Company
CAG–9.

Docket# RP85–181, 010, Texas Gas Transmission Corporation
CAG–10.
Docket# RP95–447, 000, Williams Natural Gas Company
CAG–11.
Docket#S RP90–137, 024, Williston Basin Interstate Pipeline Company
Other#S RP90–137, 027, Williston Basin Interstate Pipeline Company
RP90–137, 029, Williston Basin Interstate Pipeline Company
TM95–3–49, 003, Williston Basin Interstate Pipeline Company
CAG–12.
Docket# RP94–220, 010, Northwest Pipeline Corporation
CAG–13.
Docket# RP95–447, 001, Williams Natural Gas Company
Other#S RP89–183, 059, Williams Natural Gas Company
CAG–14.
Docket# RP95–31, 009, National Fuel Gas Supply Corporation
Other#S CP95–50, 000, National Fuel Gas Supply Corporation
CP95–324, 000, National Fuel Gas Supply Corporation
CP95–578, 000, National Fuel Gas Supply Corporation
CP95–727, 000, National Fuel Gas Supply Corporation
CP95–787, 000, National Fuel Gas Supply Corporation
RP94–367, 000, National Fuel Gas Supply Corporation
RP94–367, 002, National Fuel Gas Supply Corporation
RP95–31, 008, National Fuel Gas Supply Corporation
RP95–31, 010, National Fuel Gas Supply Corporation
RP95–298, 001, National Fuel Gas Supply Corporation
RP95–360, 000, National Fuel Customer Group and Elizabethtown Gas Co. et al., v. National Fuel Gas Supply Corporation
CAG–15.
Docket# PR94–8, 000, Louisiana Intrastate Gas Company L.L.C.
Other#S PR91–12, 000, Louisiana Intrastate Gas Company L.L.C.
PR92–7, 000, Louisiana Intrastate Gas Company L.L.C.
PR94–8, 001, Louisiana Intrastate Gas Company L.L.C.
PR94–8, 002, Louisiana Intrastate Gas Company L.L.C.
ST88–2555, 006, Louisiana Intrastate Gas Company L.L.C.
ST88–2905, 002, Louisiana Intrastate Gas Company L.L.C.
ST88–3337, 002, Louisiana Intrastate Gas Company L.L.C.
ST88–4985, 001, Louisiana Intrastate Gas Company L.L.C.
ST89–229, 001, Louisiana Intrastate Gas Company L.L.C.
ST89–1708, 003, Louisiana Intrastate Gas Company L.L.C.
ST89–1775, 002, Louisiana Intrastate Gas Company L.L.C.
CAG–16.
Docket# RP94–423, 003, Texas Gas Transmission Corporation et al.
CAG–17.
Docket# RP95–454, 001, Transwestern Pipeline Company
CAG–18.
Docket# FA94–15, 000, Florida Gas Transmission Company
CAG–19.
Docket# RP95–364, 004, Williston Basin Interstate Pipeline Company
CAG–20.
Omitted
CAG–21.
Docket# RP95–185, 010, Northern Natural Gas Company
CAG–22.
Docket# IS95–24, 001, Kaneb Pipe Line Operating Partnership, L.P.
Other#S IS95–24, 000, Kaneb Pipe Line Operating Partnership, L.P.
CAG–23.
Docket# RP95–143, 002, Northwest Pipeline Corporation
CAG–24.
Docket# RP94–425, 006, Tennessee Gas Pipeline Company
CAG–25.
Docket# OR95–5, 001, Mobil Oil Corporation v. SFPP, L.P.
Other#S OR92–8, 006, SFPP, L.P.
OR94–4, 003, SFPP, L.P.
CAG–26.
Docket# RP94–294, 006, Panhandle Eastern Pipe Line Company
CAG–27.
Docket# RP91–203, 059, Tennessee Gas Pipeline Company
Other#S RP92–132, 046, Tennessee Gas Pipeline Company
CAG–28.
Docket# IS94–4, 000, All American Pipeline Company
Other#S IS95–3, 000, All American Pipeline Company
IS95–9, 000, All American Pipeline Company
CAG–29.
Docket# MG96–5, 000, Crossroads Pipeline Company
CAG–30.
Docket# MG96–2, 000, Sea Robin Pipeline Company
CAG–31.
Docket# CP91–1910, 001, Southwestern Public Service Company v. Red River Pipeline
CAG–32.
Docket# CP95–177, 001, Burton McDaniel, M.D. v. East Tennessee Natural Gas Company
CAG–33.
Omitted
CAG–34.
Docket# CP95–611, 000, Northern Natural Gas Company
Other#S CP95–611, 001, Northern Natural Gas Company
CAG–35.
Docket# CP95–737, 000, Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation
CAG–36.
Docket# CP95–375, 000, Great Lakes Gas Transmission Limited Partnership
CAG–37.
Omitted
CAG–38.
Docket# CP95–12, 000, Williams Gas Processing-Kansas Hugoton Company
Other#S CP95–11, 000, Williams Natural Gas Company
CP95–11, 001, Williams Natural Gas Company
CP95–11, 002, Williams Natural Gas Company
CP95–12, 001, Williams Gas Processing-Kansas Hugoton Company
CAG–39.
Docket# CP95–239, 000, Interenergy Corporation
Other#S CP95–235, 000, Williston Basin Interstate Pipeline Company
CP95–236, 000, Williston Basin Interstate Pipeline Company
CAG–40.
Omitted
CAG–41.
Docket# RP96–115, 000, CNG Transmission Corporation
CAG–42.
Docket# RP96–122, 000, CNG Transmission Corporation
CAG–43.
Docket# RP96–125, 000, ANR Pipeline Company
CAG–44.
Docket# RP96–117, 000, Texas Eastern Transmission Corporation
CAG–45.
Docket# RP95–88, 004, Tennessee Gas Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: February 7, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–3163 Filed 2–8–96; 2:27 pm]

BILLING CODE 6717–01–P

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 10:15 a.m., Tuesday, February 13, 1996.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation. (This meeting will encompass new business as well as business items that were originally scheduled for the

January 9, 1996 meeting which was canceled due to inclement weather.)

CONTACT PERSON FOR MORE INFORMATION:
Barbara Arnold 301–564–3354.

Dated: February 7, 1996.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 96–3107 Filed 2–7–96; 4:23 am]

BILLING CODE 8720–01–M

Corrections

Federal Register
Vol. 61, No. 29
Monday, February 12, 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 DEFENSE

Office of the Secretary

Third Annual National Security Education Program (NSEP) Institutional Grants Competition

Correction

In notice document 96–231 appearing on page 643 in the issue of Tuesday, January 9, 1996, make the following correction:

In the second column, under the heading FOR FURTHER INFORMATION CONTACT, the seventh line should read ''collier@nsep.policy.osd.mil.''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1417-001 and 1835-013]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Notice of Public Briefing

Correction

In notice document 95–1809, appearing on page 3394, in the issue of Wednesday, January 31, 1996, the project numbers were inadvertently omitted and should appear as set forth above.

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 95-3]

Registrability of Pictorial, Graphic, or Sculptural Works Where a Design Patent Has Been Issued

Correction

Rule document 95–7363 beginning on page 15605 in the issue of Friday, March 24, 1995, was inadvertently published in the Notices section. It should have appeared in the Rules section.

BILLING CODE 1505–01–D

Federal Register

Monday
February 12, 1996

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances, and Coal Washing and Transportation Allowances; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

RIN 1010–AC00

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances, and Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Royalty Management Program (RMP) of the Minerals Management Service (MMS) is amending its valuation regulations for oil and gas transportation and processing allowances for production from Federal leases. It also is amending the regulations for coal washing and transportation allowances for production from Federal leases. The principal change is to eliminate allowance forms filing for Federal mineral leases. These changes will affect Federal oil and gas and coal leases only. The rule will not change the existing regulations applicable to Indian leases at this time.

EFFECTIVE DATE: March 1, 1996.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, at (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Thomas K. Brozovich, Financial Compliance Branch, Compliance Verification Division, and Harold E. Corley, Solid Minerals Valuation Branch, Valuation and Standards Division, RMP, MMS, Lakewood, Colorado.

This rule is effective March 1, 1996, because mineral royalties are reported monthly, and a reporting change in the middle of the month would complicate reporting for both industry and MMS. The earlier effective date of March 1 is also preferable because the rule reduces the administrative reporting for the minerals industry for production from Federal mineral leases.

I. Background

This final rule consolidates two proposed rules. In the Notices of Proposed Rulemaking, MMS explained the process by which it administers the allowance form filing requirements and asked for input on several related issues (60 FR 40120, August 7, 1995, and 60 FR 40127, August 7, 1995). The current valuation regulations for oil, gas, and coal require that certain forms be filed as a prerequisite to the deduction of allowances on Form MMS–2014, Report of Sales and Royalty Remittance for transportation, processing, and washing costs. Failure to timely file required forms can result in significant consequences, including loss of the allowance. An Allowance Study Group examined this issue at length in 1993 and made certain recommendations to improve allowance administration. Proposed rules incorporating the Allowance Study Group's recommendations were published in the Federal Register on August 7, 1995.

The purpose of these final regulations is to revise the oil and gas allowance regulations for production from Federal leases which became effective March 1, 1988, and the coal allowance regulations for production from Federal leases which became effective March 1, 1989.

As explained further below, MMS is not making any changes at this time to the regulations applicable for Indian leases. Instead, we will keep the rulemaking regarding Indian leases open and will issue amended regulations in the near future.

II. Comments on Proposed Rules

The proposed rulemakings provided for a 60-day public comment period, which ended October 6, 1995, and, was extended to October 20, 1995, by a subsequent notice (60 FR 51963, October 4, 1995).

The Allowance Study Group and others within MMS identified issues for which opinions were sought from interested parties during the comment period. Specifically, the issues addressed:

a. The need for and usefulness of the current regulatory requirement for allowance forms submission, including the information on each form.

b. The need for and equity of allowance payback and late payment interest charges for failure to file forms.

c. The need for regulatory approval thresholds or limits on the amount of allowances which could be claimed without gaining permission.

d. The need to establish an assessment when payors improperly net their allowances when reporting on Form MMS–2014.

e. The need to eliminate the current treatment of transportation factors in arm's-length contracts as reductions in value.

f. The need to assess payors for exceeding allowance limits in certain circumstances prior to receiving MMS approval.

g. The need to assess payors for erroneously reporting information on allowance forms.

Twenty commenters submitted timely comments during the comment period. Two additional commenters submitted late comments that were received on October 24, 1995. Twenty of the comments were from industry while two were from representatives of Indian lessors.

Comments from industry overwhelmingly suggested that we cease using allowance forms as a means to track allowances while comments from the Indian community supported the need to be able to track and verify allowances.

When the original allowance regulations were implemented in 1988, MMS was not contemporaneous with its audit efforts and forms were needed to properly track allowances. However, we are now keeping contemporaneous with our audits and have a reduced need for such forms. Also, the Federal Gas Valuation Negotiated Rulemaking Committee recommended, among other things, in its March 1995 report, that MMS discontinue requiring transportation and processing allowance form filings for gas production. The Indian Gas Valuation Negotiated Rulemaking Committee is still discussing options. Accordingly, MMS has decided to adopt this final rule to change allowance regulations for Federal leases only at this time and to leave the rulemaking open for allowance regulations for Indian leases. The existing regulations are redesignated for Indian leases and are changed to remove references to Federal leases.

Having different allowance rules for Federal leases than for Indian leases requires completely separate valuation regulations. Therefore, the current subparts are redesignated as Subpart C—Federal Oil, Subpart D—Federal Gas, and Subpart F—Federal Coal, and references to Indian leases are removed. The new designation for Indian valuation regulations which will be unchanged from the existing regulations, will be Part 206–Product Valuation, Subpart B—Indian Oil, Subpart E—Indian Gas, and Subpart J—Indian Coal.

General Comments

Most of the commenters stated that we should not implement the proposed rule, but that we should improve it and, in fact, go several steps beyond the proposal.

Response. MMS has determined, except for requirements on Indian leases, that the commenters pose strong arguments for further streamlining the

regulations for allowance form filing requirements. Accordingly, we have changed the regulations for Federal leases to implement many of the suggestions. However, the current regulations remain intact for Indian leases, pending further evaluation and decisions.

Specific Comments

(a) Almost every industry commenter suggested that MMS adopt the recommendation of The Federal Gas Negotiated Rulemaking Committee to cease requiring allowance form filings for natural gas. The commenters also suggested we cease requiring such forms for oil and coal as well as gas.

Response. MMS agrees with the industry commenters on this issue and has incorporated their suggestions for Federal leases.

(b) Many of the industry commenters correctly stated that discontinuing the forms filing requirement will make the issue of payback bills and late payment interest moot.

Response. MMS agrees with this conclusion and has deleted such consequences for violations on Federal leases.

(c) No comments were received on the issue of requiring approval to exceed established oil and gas allowance limits.

Response. MMS believes that allowances should have established limits which cannot be unilaterally exceeded. However, we also understand that, occasionally, circumstances are such that the cost of transporting or processing may exceed the allowable percentage limits. Therefore, we are keeping the established limits which have been effective since March 1, 1988.

(d) Most commenters said that an assessment for improperly netting allowances on the Form MMS–2014 was not necessary because payors do not purposely report in that manner. Further, they stated that such exceptions should be addressed on a case-by-case basis.

Response. MMS believes it is necessary to have a deterrent for improper reporting, especially netting allowances. We recognize that some reporting may be inadvertent, and therefore, have implemented an assessment provision which allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor who has infrequently or never netted its allowances while being able to more aggressively address the situation with the payor who chronically nets allowances.

(e) Many commenters recommended that MMS retain the oil and gas transportation factors in arm's-length contracts to ease the buying, selling, and reporting burden.

Response. MMS agrees that transportation factors should remain as a viable industry mechanism for buying and selling even though some problems differentiating factors from allowances existed in the past. Therefore we have retained transportation factors for arm's-length contracts.

(f) Few commenters responded on the need to assess payors for exceeding oil and gas allowance limits prior to receiving MMS approval.

Response. MMS believes that exceeding established allowance limits without prior MMS approval unjustly benefits industry and penalizes the Federal Government. Accordingly, we have adopted an assessment, based on an interest calculation methodology, presented in 30 CFR 218.54 to bill companies which exceed established allowance limits without prior MMS approval.

(g) Few commenters responded to the proposal to assess payors for erroneous reporting and other violations. Those who did held the general opinion that MMS has enough assessments to encourage correct reporting and such violations should be handled on a case-by-case basis.

Response. MMS agrees with the commenters. We have enough assessments in many areas to encourage correct reporting the first time. Therefore, only the additional limited assessments for netting and exceeding allowance limits heretofore discussed will be implemented in this rulemaking.

For the reasons discussed above, MMS is amending its valuation regulations to have new allowance requirements for oil, gas, and coal production from Federal lands. Allowance form filing requirements for production from Indian lands are not being changed pending further evaluation and discussions.

Allowance requirements for production from Federal lands are being changed to eliminate unnecessary regulatory burdens on industry. However, Federal allowance requirements will also reflect an assessment for ''improper netting'' because this concealment of information has adverse effects on MMS' efforts to monitor the accuracy of royalty payments.

III. Section by Section Analysis

a. Federal Oil.

1. The only change to several sections within Subpart C—Federal Oil involves the removal of Indian references. Therefore, the changes to these sections will not be separately discussed for the purposes of this rulemaking. The sections which are deleted entirely or partially revised to eliminate the reference to Indian leases are:

§ 206.100 Purpose and scope.

§ 206.101 Definitions.

The following terms are changed or removed: Audit, BIA, Gross proceeds, Indian allottee, Indian Tribe, Lease products, Lessee, and Net profit share.

§ 206.102 Valuation standards.

Section 206.102(a)(2)(i) and (ii); (d), (i), (k) and (l) are revised or removed to eliminate the reference to Indian leases.

§ 206.105 Determination of transportation allowances.

Section 206.105(b)(5) and (e)(2) are revised to eliminate the reference to Indian leases.

2. We are also amending several sections of Subpart C—Federal Oil to reflect comments from industry for elimination of allowance forms. Further, based on recommendations of our Allowance Study Group, we are revising the current assessment structure to focus our efforts on administration of allowance information provided on Form MMS–2014 by the payor, rather than generating a revenue stream from sanctions for the untimely submission of allowance forms.

Accordingly, we are revising the following sections:

§ 206.101 Definitions.

Allowance We changed the definition to remove any implication of a forms filing requirement, or of having to seek MMS approval prior to claiming an allowance on Form MMS–2014.

Netting We added this definition to clarify the reporting situation which will result in an assessment for not reporting allowances as a separate line item on Form MMS–2014.

§ 206.104 Transportation allowances—general.

Section 206.104(b)(2) is amended to specify that Form MMS–4393 is the application form used to request an exception to exceed the regulatory allowance limitation of 50 percent for oil transportation.

Section 206.104(d) is amended to add the caveat about *netting* to further clarify improper reporting of allowances on Form MMS–2014.

§ 206.105 Determination of transportation allowances.

Section 206.105(a)(1)(i) is amended to remove the requirement to file Form

MMS–4110 (and the related 3-month retroactivity period) and specify that the lessee/payor can use a self-implementing approach to claim an allowance under an arm's-length contract by reporting an allowance as a separate line entry on the Form MMS–2014.

Section 206.105(a)(3) is revised to reflect a change in the cost allocation approval process. The lessee is still required to request and receive approval for a cost allocation method for transportation of both gaseous and liquid products through the same delivery system. However, that approval process will no longer be tied to allowance form filing. Instead, the lessee must submit the proposal within 3 months of claiming the deduction on the Form MMS–2014.

Section 206.105(b)(1) is amended to remove the requirement to file Form MMS–4110 (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under a non-arm's-length or no contract by reporting an allowance as a separate line entry on Form MMS–2014.

Section 206.105(b)(2)(v) is amended to specify that the reporting period will be based on a calendar year as opposed to a forms filing reporting period. We retained the use of the Standard and Poor's BBB rating.

Section 206.105(b)(4) is amended to reflect a change in the cost allocation approval process. The lessee is still required to request and receive approval for a cost allocation method for transportation of both gaseous and liquid products through the same delivery system. However, that approval process will no longer be tied to allowance form filing; instead, the lessee must submit the proposal within 3 months of claiming the deduction on Form MMS–2014. Section 206.105(c)(1)(i) is amended for sales under arm's-length contracts to specify that the lessee must take the transportation allowance by reporting a separate line item on the Form MMS–2014. Submitting the Form MMS–4110 is no longer applicable.

Sections 206.105(c)(1) (ii) and (iii) these paragraphs are removed because of the elimination of allowance forms.

Section 206.105(c)(1)(iv) is redesignated as Section 206.105(c)(1)(ii) because of paragraph renumbering. We will still require the lessee to document its transportation costs and to make that data available upon MMS request. Sections 206.105(c)(1)(v) and (vi) are removed because of the elimination of allowance forms.

Section 206.105(c)(2)(i) is amended for sales under non-arm's-length or no contracts to specify that the lessee takes the transportation allowance by reporting a separate line item on the Form MMS–2014. Submitting the Form MMS–4110 is no longer applicable.

Sections 206.105(c)(2) (ii) and (iii) are removed because of the elimination of allowance forms.

Section 206.105(c)(2)(iv) is redesignated § 206.105(c)(2)(ii) because of paragraph renumbering. We are removing reference to Form MMS–4110 and are retaining the lessee's use of cost estimates for the current calendar year until such time as actual cost data becomes available. Section 206.105(c)(2)(v) is removed because of the elimination of allowance forms.

Section 206.105(c)(2)(vi) is redesigned as § 206.105(c)(2)(iii) to conform with the change in paragraph numbering. We will still require the lessee to document its transportation costs and to make that data available upon MMS request. We are removing reference to Form MMS–4110.

Section 206.105(c)(2)(vii) is removed because of the elimination of allowance forms.

Section 206.105(c)(2)(viii) is redesignated as § 206.105(c)(2)(iv) to conform with paragraph renumbering. The lessee may use a FERC-approved or State regulatory agency-approved tariff as its transportation cost. Section 206.105(c)(3) is removed because of the elimination of allowance forms.

Section 206.105(c)(4) is removed because it duplicates the requirement to report a separate line entry on the Form MMS–2014 when claiming an allowance.

Section 206.105(d)(1)–(2) is amended to remove the sanction language associated with untimely filing of allowance forms, and replaces it with an assessment for improper netting. We have imposed this new assessment, described under Section 206.105(d)(1), because of the impact concealing allowance information on the Form MMS–2014 has on MMS' ability to verify the allowance taken. The new assessment provision allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor who has infrequently or never netted its allowances, while being able to more aggressively address the situation with the payor who chronically nets its allowances (*i.e.*, a repeat offender). Use of this new assessment is consistent with the conclusions and recommendations of the multiconstituent Allowance Study Group.

We also have included under new Section 206.105(d)(2) the current policy of assessing interest on the amount of an allowance taken in excess of the threshold (50 percent of the value of the oil transported) from the date the excess allowance is taken to the date the lessee files an exception request (Form MMS–4393) with MMS.

Section 206.105(d)(2) is redesignated as § 206.105(d)(3) to conform with paragraph renumbering.

Section 206.105(d)(3) is redesignated as § 206.105(d)(4) due to paragraph renumbering.

Section 206.105(e)(1) is amended to remove reference to the allowance form filing period. This paragraph still authorizes the lessee to make adjustments to estimated allowances based on actual cost data for the allowance reporting period. However, it clarifies that when such adjustments result in an underpayment of royalty, the interest for such underpayment is computed from the date the lessee took the deduction to the date the lessee repays the difference to MMS.

b. Federal Gas

(1) The only change to several sections within Subpart D—Federal Gas involves the removal of references to Indian leases or lessors. The sections which are deleted entirely or partially revised to eliminate the reference to Indian leases or lessors are:

§ 206.150 Purpose and scope.

§ 206.151 Definitions.

The following terms are changed or removed: Audit, BIA, Gross proceeds, Indian allottee, Indian Tribe, Lease products, Lessee, and Net profit share

§ 206.152 Valuation standards—unprocessed gas.

Section 206.152 (a)(3) (i) and (ii); (e)(2), (i), (k) and (l) are revised or removed to eliminate the reference to Indian leases or lessors.

§ 206.153 Valuation standards—processed gas.

Section 206.153 (a)(3) (i) and (ii); (e)(2), (i), (k) and (l) are revised to eliminate the reference to Indian leases or lessors.

§ 206.154 Determination of quantities and qualities for computing royalties.

Section 206.154(c)(4) is revised to eliminate the reference to Indian leases or lessors.

§ 206.155 Accounting for comparison.

Section 206.155(b) is revised to eliminate the reference to Indian leases or lessors.

§ 206.157 Determination of transportation allowances.

Section 206.157(e)(2) is revised to eliminate the reference to Indian leases or lessors.

§ 206.159 Determination of processing allowances.

Section 206.159(c)(2)(v) is revised to eliminate the reference to Indian leases or lessors.

(2) We are also amending several sections of Subpart D—Federal Gas to update the current regulations (e.g., removal of Notice to Lessees and Operators of Federal Onshore Oil and Gas Leases (NTL)) and to reflect comments from industry for elimination of allowance forms. Further, based on recommendations of our Allowance Study Group, we are revising the current assessment structure to focus our efforts on verifying allowance information provided on Form MMS–2014 by the payor, rather than generating a revenue stream from sanctions on the filing and timely submission of allowance forms.

Accordingly, we are revising the following sections:

§ 206.150 Purpose and scope.

Section 206.150(e) is eliminated in its entirety because NTL's were terminated by the Federal Register Notice published on January 15, 1988, (53 FR 1230).

§ 206.151 Definitions.

Allowance We changed the definition to remove any implication of a forms filing requirement, or of having to seek MMS approval prior to claiming an allowance on Form MMS–2014.

Netting We added this definition to clarify the reporting situation which will result in an assessment for not reporting allowances as a separate line item on Form MMS–2014.

§ 206.156 Transportation allowances—general.

Section 206.156(c)(3) is amended to specify that Form MMS–4393 is the application form used to request an exception to exceed the regulatory allowance limitation of 50 percent for gas transportation.

Section 206.156(d) is amended to add the caveat about netting to further clarify improper reporting of allowances on Form MMS–2014.

§ 206.157 Determination of transportation allowances.

Section 206.157(a)(1)(i) is amended to remove the requirement to file Form MMS–4295, Gas Transportation Allowance Report (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under an arm's-length contract by reporting a separate line entry on Form MMS–2014.

Section 206.157(a)(3) is amended to clarify that the lessee is still required to request and receive approval for a cost allocation method for transportation of both gaseous and liquid products through the same delivery system. It also will clarify that the approval process will no longer be tied to allowance form filing; instead, the lessee must submit the proposal within 3 months of claiming the deduction on Form MMS–2014.

Section 206.157(b)(1) is revised to remove the requirement to file Form MMS–4295 (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under a non-arm's-length or no contract by reporting a separate line entry on Form MMS–2014.

Section 206.157(b)(2)(v) is amended to specify that the reporting period will be based on a calendar year basis as opposed to a forms filing reporting period. We retained the use of the Standard and Poor's BBB rating.

Section 206.157(b)(4) is amended to clarify the approval for cost allocation methods. The lessee is still required to request and receive approval for a cost allocation method for transportation of both gaseous and liquid products through the same delivery system. The approval process will no longer be tied to allowance form filing; instead, the lessee must submit the proposal within 3 months of claiming the deduction on Form MMS–2014.

Section 206.157(c)(1)(i) is amended for sales under arm's-length contracts to specify that the lessee takes the transportation allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4295 is no longer applicable.

Sections 206.157(c)(1) (ii) and (iii) are removed because of the elimination of allowance forms.

Section 206.157(c)(1)(iv) is redesignated as § 206.157(c)(1)(ii) due to paragraph renumbering. We will still require the lessee to document its transportation costs and to make all documentation available upon MMS request.

Sections 206.157(c)(1) (v) and (vi) are removed because of the elimination of allowance forms.

Section 206.157(c)(2)(i) is amended for sales under a non-arm's-length or no contract to specify that the lessee takes the transportation allowance by reporting a separate line item on MMS–2014. Submitting Form MMS–4295 is no longer applicable.

Sections 206.157(c)(2) (ii) and (iii) are removed because of the elimination of allowance forms.

Section 206.157(c)(2)(iv) is redesignated as § 206.157(c)(2)(ii) because of paragraph renumbering. We are removing reference to Form MMS–4295 and are retaining the lessee's use of cost estimates for the current calendar year until such time as actual cost data become available.

Section 206.157(c)(2)(v) is removed because of the elimination of allowance forms.

Section 206.157(c)(2)(vi) is redesignated as § 206.157(c)(2)(iii) because of paragraph renumbering. We will still require the lessee to document its transportation costs and to make that data available upon MMS request. We are removing reference to Form MMS–4295.

Section 206.157(c)(2)(vii) is removed because of the elimination of allowance forms.

Section 206.157(c)(2)(viii) is redesignated as § 206.157(c)(2)(iv) because of paragraph renumbering. The lessee may use a FERC-approved or State regulatory agency-approved tariff as its transportation cost.

Section 206.157(c)(3) is removed because of the elimination of allowance forms.

Section 206.157(c)(4) is removed because it duplicates the requirement to report a separate line entry on Form MMS–2014 when claiming an allowance.

Sections 206.157(d) (1)–(2) are amended to remove the sanction language associated with timely filing of allowance forms, and replace it with an assessment for improper netting. We have imposed this new assessment, described under § 206.157(d)(1), because of the impact concealing allowance information on Form MMS–2014 has on MMS' ability to verify the allowance taken. The new assessment provision allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor which has infrequently or never netted its allowances while being able to more aggressively address the situation with

the payor who chronically nets its allowances (*i.e.*, a repeat offender). Use of this new sanction is consistent with the conclusions and recommendations of the multiconstituent Allowance Study Group.

We also have included under new § 206.157(d)(2) the current policy of assessing interest on the amount of an allowance taken in excess of the threshold (50 percent of the value of the gas transported) from the date the excess allowance is taken to the date the lessee files an exception request Form MMS–4393, Request to Exceed Regulatory Allowance Limitation with MMS.

Section 206.157(d)(2) is redesignated as § 206.157(d)(3) because of paragraph renumbering.

Section 206.157(d)(3) is redesignated as § 206.157(d)(4) because of paragraph renumbering.

Section 206.157(e)(1) is amended to remove reference to the allowance form filing period. This paragraph still authorizes the lessee to make adjustments to estimated allowances based on actual cost data for the allowance reporting period. However, it clarifies that when such adjustments result in an underpayment of royalty, the interest for such underpayment is computed from allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS.

§ 206.158 Processing allowances—general.

Section 206.158(c)(3) is amended to specify that Form MMS–4393 is the application form used to request an exception to exceed the regulatory allowance limitation of 66⅔ percent for gas processing.

Section 206.158(e) is amended to add the caveat about netting to further clarify improper reporting of allowances on Form MMS–2014.

§ 206.159 Determination of processing allowances.

Section 206.159(a)(1)(i) is amended to remove the requirement to file Form MMS–4109, Gas Processing Allowance Summary Report (and the related 3-month retroactivity period) and specify that the lessee/payor can use a self-implementing approach to claim an allowance under an arm's-length contract by reporting a separate line entry on Form MMS–2014. This change implements industry's comments requesting elimination of allowance forms.

Section 206.159(a)(3) is amended to clarify that the lessee is still required to request and receive approval for a cost allocation method for transportation of both gaseous and liquid products through the same delivery system. However, that approval process will no longer be tied to allowance form filing; instead, the lessee must submit the proposal within 3 months of claiming the deduction on Form MMS–2014.

Section 206.159(b)(1) is revised to remove the requirement to file Form MMS–4109 (and the related 3-month retroactivity period) and specify that the lessee/payor can use a self-implementing approach to claim an allowance under a non-arm's-length or no contract by reporting a separate line entry on Form MMS–2014. This change implements industry's comments requesting elimination of allowance forms.

Section 206.159(b)(2)(v) is amended to specify that the reporting period will be based on a calendar year basis as opposed to a forms filing reporting period. We retained the use of the Standard and Poor's BBB rating.

Section 206.159(c)(1)(i) is revised for sales under arm's-length contracts, to specify that the lessee takes the gas processing allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4109 is no longer required.

Section 206.159(c)(1) (ii)–(iii) are removed because of the elimination of allowance forms.

Section 206.159(c)(1)(iv) is redesignated as § 206.159(c)(1)(ii) because of paragraph renumbering. We still require the lessee to document their processing costs and to make that data available upon MMS request.

Sections 206.159(c)(1) (v) and (vi) are removed because of the elimination of allowance forms.

Section 206.159(c)(2)(i) is revised for sales under a non-arm's-length or no contract to specify that the lessee takes the gas processing allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4109 is no longer required.

Sections 206.159(c)(2)(ii) and (iii) are removed because of the elimination of allowance forms.

Section 206.159(c)(2)(iv) is redesignated as § 206.159(c)(2)(ii) because of paragraph renumbering. We are removing reference to form MMS–4109 and are retaining the lessee's use of cost estimates for the current calendar year until such time as actual cost data becomes available.

Section 206.159(c)(2)(v) is removed because of the elimination of allowance forms.

Section 206.159(c)(2)(vi) is redesignated as § 206.159(c)(2)(iii) because of paragraph renumbering. We will still require the lessee to document its processing costs and to make that data available upon MMS request. We are removing reference to Form MMS–4109.

Section 206.159(c)(2)(vii) is removed because of the elimination of allowance forms.

Section 206.159(c)(2)(viii) is redesignated as § 206.159(c)(2)(iv) due to paragraph renumbering.

Section 206.159(c)(3) is removed because of the elimination of allowance forms.

Section 206.159(c)(4) is removed because it duplicates the requirement to report a separate line entry on Form MMS–2014 when claiming an allowance.

Sections 206.159(d) (1) and (2) are revised to remove the consequences associated with untimely filing of allowance forms, and replacing them with an assessment for improper netting. We have imposed this new assessment language, described under § 206.159(d)(1), based on the severity of concealing allowance information on Form MMS–2014. The new assessment provision allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor who has infrequently or never netted its allowances while being able to more aggressively address the situation with the payor who chronically nets its allowances (*i.e.*, a repeat offender). Use of this new assessment is consistent with the conclusions and recommendations of the multiconstituent Allowance Study Group.

We also have included under new § 206.159(d)(2) the current policy of assessing interest on the amount of an allowance taken in excess of the threshold (66 ⅔ percent of the value of the gas processed) from the date the excess allowance is taken to the date the lessee files an exception request (Form MMS–4393) with MMS.

Section 206.159(d)(2) is redesignated as § 206.159(d)(3) because of paragraph renumbering.

Section 206.159(d)(3) is redesignated as § 206.159(d)(4) because of paragraph renumbering.

Section 206.159(e)(1) is amended to remove reference to the allowance form filing period. This paragraph still authorizes the lessee to make adjustments to estimated allowances based on actual cost data for the allowance reporting period. However, it clarifies that when such adjustments result in an underpayment of royalty, the interest for such underpayment is

computed from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS.

c. Federal Coal

(1) The only change to several sections within Subpart F—Federal Coal involves the removal of references to Indian leases or lessors. The sections which are deleted entirely or partially revised, to eliminate the reference to Indian leases or lessors are:

§ 206.250 Purpose and scope.

§ 206.251 Definitions.

The following terms are changed or removed: Audit, BIA, Gross proceeds, Indian allottee, Indian Tribe, Lease, and Lessee.

§ 206.253 Coal subject to royalties—general provisions.

Section 206.253 (a) and (c) are revised to eliminate the reference to Indian leases or lessors.

§ 206.255 Point of royalty determination.

Section 206.255(a) and (b) are revised to eliminate the reference to Indian leases or lessors.

§ 206.256 Valuation standards for cents-per-ton leases.

Section 206.256(a) is revised to eliminate the reference to Indian leases or lessors.

§ 206.257 Valuation standards for ad valorem leases.

Section 206.257 (a), (d)(2), (h), (j), and (k) are revised to eliminate the reference to Indian leases or lessors.

§ 206.258 Washing allowances—general.

Section 206.258(c) is revised to eliminate the reference to Indian leases or lessors.

§ 206.261 Transportation allowances—general.

Section 206.261(a)(1), (a)(2), and (e) are revised to eliminate the reference to Indian leases or lessors.

§ 206.262 Determination of transportation allowances.

Section 206.262(b)(3) is revised to eliminate the reference to Indian leases or lessors.

(2) We are revising several sections of Subpart F—Federal Coal to reflect comments from industry for elimination of allowance forms. Further, based on recommendations of our Allowance Study Group, we are revising the current assessment structure to focus our efforts on verifying allowance information provided on Form MMS–2014, by the payor, rather than generating a revenue stream from sanctions on the filing and timely submission of allowance forms.

Accordingly, we are revising the following sections:

§ 206.251 Definitions.

Allowance We changed the definition to remove any implication of a forms filing requirement, or of having to seek MMS approval prior to claiming an allowance on the Form MMS–2014.

Netting We added this definition to clarify the reporting situation which will result in an assessment for not reporting allowances as a separate line item on Form MMS–2014.

§ 206.259 Determination of washing allowances.

Section 206.259(a)(1) is amended to remove the requirement to file Form MMS–4292, Coal Washing Allowance Report (and the related 3-month retroactivity period) and specifying that the lessee/payor can use a self-implementing approach to claim an allowance under an arm's-length contract by reporting a separate line entry on Form MMS–2014. This change implements industry's comments requesting elimination of allowance forms.

Section 206.259(b)(1) is amended to remove the requirement to file Form MMS–4292 (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under a non-arm's-length or no contract by reporting a separate line entry on the Form MMS–2014.

Section 206.259(b)(2)(v) is amended to specify that the reporting period will be based on a calendar year basis as opposed to a forms filing reporting period. We retained the use of the Standard and Poor's BBB rating.

Section 206.259(c)(1)(i) is amended for sales under arm's-length contracts to specify that the lessee takes the coal washing allowance by reporting a separate line item on Form MMS–2014. Submitting the Form MMS–4292 is no longer required.

Sections 206.259(c)(1) (ii) and (iii) these paragraphs are removed because of the elimination of allowance forms. Section 206.259(c)(1)(iv) is redesignated as § 206.259(c)(1)(ii). We will still require the lessee to document its washing costs and to make all documentation available upon request by MMS.

Section 206.259(c)(1)(v) is removed because of the elimination of allowance forms.

Section 206.259(c)(1)(vi) is removed because of the elimination of allowance forms.

Section 206.259(c)(2)(i) is revised for sales under a non-arm's-length or no contract to specify that the lessee takes the coal washing allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4292 is no longer required.

Sections 206.259(c)(2) (ii)–(iii) are removed because of the elimination of allowance forms.

Section 206.259(c)(2)(iv) is redesignated as § 206.259(c)(2)(ii) due to paragraph renumbering. We are removing reference to Form MMS–4292 and are retaining the lessee's use of cost estimates for the current calendar year until such time as actual cost data become available.

Section 206.259(c)(2)(v) is removed because of the elimination of allowance forms.

Section 206.259(c)(2)(vi) is redesignated as § 206.259(c)(2)(iii) because of paragraph renumbering. We will still require the lessee to document its washing costs and to make that data available upon MMS request. We are removing reference to Form MMS–4292.

Section 206.259(c)(2)(vii) is removed because of the elimination of allowance forms.

Section 206.259(c)(3) is removed because of the elimination of allowance forms.

Section 206.259(c)(4) is removed because it duplicates the requirement to report a separate line entry on Form MMS–2014 when claiming an allowance.

Section 206.259(d)(1) is amended to remove the language associated with timely filing of allowance forms, and replaces it with an assessment for improper netting. We have imposed this new assessment, described under § 206.259 (d)(1), because of the impact concealing allowance information on Form MMS–2014 has on MMS' ability to verify allowances taken. The new assessment provision allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor which has infrequently or never netted its allowances while being able to more aggressively address the situation with the payor which chronically nets its allowances (*i.e.*, a repeat offender). Use of this new assessment is consistent with the conclusions and recommendations of the multiconstituent Allowance Study Group.

Section 206.259(e)(1) is amended to remove reference to the allowance form filing period. This paragraph still authorizes the lessee to make

adjustments to estimated allowances based on actual cost data for the allowance reporting period. However, it clarifies that when such adjustments result in an underpayment of royalty, the interest for such underpayment is computed from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS.

§ 206.262 Determination of transportation allowances.

Section 206.262(a)(1) is amended to remove the requirement to file Form MMS–4293, Coal Transportation Allowance Report (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under an arm's-length contract by reporting a separate line entry on Form MMS–2014.

Section 206.262(b)(1) is amended to remove the requirement to file Form MMS–4293 (and the related 3-month retroactivity period) and specify that the lessee/payor may use a self-implementing approach to claim an allowance under a non-arm's-length or no contract by reporting a separate line entry on Form MMS–2014.

Section 206.262(b)(2)(v) is amended to specify that the reporting period will be based on a calendar year basis as opposed to a forms filing reporting period. We retained the use of the Standard and Poor's BBB rating.

Section 206.262(c)(1)(i) is revised for sales under arm's-length contracts to specify that the lessee takes the coal transportation allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4293 is no longer applicable.

Section 206.262(c)(1) (ii)–(iii) are removed because of the elimination of allowance forms.

Section 206.262(c)(1)(iv) is redesignated as § 206.262(c)(1)(ii) because of paragraph renumbering. We will still require the lessee to document its transportation costs and to make that data available upon request by MMS.

Section 206.262(c)(1) (v)–(vi) are removed because of the elimination of allowance forms.

Section 206.262(c)(2)(i) is amended for sales under a non-arm's-length or no contract to specify that the lessee takes the coal transportation allowance by reporting a separate line item on Form MMS–2014. Submitting Form MMS–4293 is no longer applicable.

Sections 206.262(c)(2) (ii) and (iii) are removed because of the elimination of allowance forms.

Section 206.262(c)(2)(iv) is redesignated as § 206.262(c)(2)(ii) due to paragraph renumbering. We are removing reference to Form MMS–4293 and are retaining the lessee's use of cost estimates for the current calendar year until such time as actual cost data become available. Section 206.262(c)(2)(v) is removed because of the elimination of allowance forms.

Section 206.262(c)(2)(vi) is redesignated as § 206.262(c)(2)(iii) because of paragraph renumbering. We will still require the lessee to document its transportation costs and to make that data available upon MMS request. We are removing reference to Form MMS–4293.

Section 206.262(c)(2)(vii) is removed because of the elimination of allowance forms.

Section 206.262(c)(2)(viii) is redesignated as § 206.262(c)(2)(iv) because of paragraph renumbering. The lessee may use a FERC-approved or State regulatory agency-approved tariff as its transportation cost.

Section 206.262(c)(3) is removed because of the elimination of allowance forms.

Section 206.262(c)(4) is removed since it duplicates the requirement to report a separate line entry on Form MMS–2014 when claiming an allowance.

Section 206.262(d)(1) is amended to remove the language associated with timely filing of allowance forms, and replaces it with an assessment for improper netting. We have imposed this new assessment, described under § 206.259(d)(1), because of the impact of concealing allowance information on Form MMS–2014 has on MMS' ability to verify allowances taken. The new assessment provision allows us to bill *up to 10 percent* of the allowance reported as a netted amount but not to exceed $250 per lease selling arrangement per sales period. This provision gives us the flexibility to work with the payor which has infrequently or never netted its allowances while being able to more aggressively address the situation with the payor which chronically nets its allowances (*i.e.*, a repeat offender). Use of this new assessment is consistent with the conclusions and recommendations of the multiconstituent Allowance Study Group.

Section 206.262(e)(1) is amended to remove reference to the allowance form filing period. This paragraph still authorizes the lessee to make adjustments to estimated allowances based on actual cost data for the allowance reporting period. However, it clarifies that when such adjustments result in an underpayment of royalty, the interest for such underpayment is computed from the allowance reporting period when the lessee took the deduction to date the lessee repays the difference to MMS.

d. Indian Oil

(1) As stated earlier, since there will be different reporting requirements for claiming allowance deductions for Indian and Federal lands, we have established a new valuation subpart, designated Subpart B—Indian Oil. This new subpart mirrors what was the old combined Subpart C—Federal and Indian Oil.

The following changes in paragraphs involve removal of Federal references for new Subpart B—Indian Oil, and therefore will not be separately discussed:

§ 206.50 Purpose and scope.

Section 206.50 (a)–(c).

§ 206.51 Definitions.

Audit, Field, Gathering, Gross proceeds, Lease products, Lessee, Net profit share, Outer Continental Shelf, Posted price, and Section 6 lease.

§ 206.52 Valuation standards.

Section 206.52 (d), (i), and (k).

§ 206.53 Point of royalty settlement.

Section 206.53 (a) (1)–(2) and (b).

§ 206.54 Transportation allowances-general.

Section 206.54 (a) (1)–(2).

§ 206.55 Determination of transportation allowances.

Section 206.55 (b)(5), (c)(2)(viii), and (e)(2)–(3).

(2) To specify the form used to request a waiver to allowance limitations, we made the following change:

§ 206.54 Transportation allowances-general.

Section 206.54(b)(2).

This further clarifies that the lessee must use Form MMS–4393 as the application form to request an exception to exceed the regulatory allowance limitation of 50 percent for oil transportation.

e. Indian Gas.

(1) Changes to the following paragraphs involve partial or total removal of Federal references for new Subpart E—Indian Gas, and therefore will not be separately discussed:

§ 206.170 Purpose and scope.

Section 206.170 (a)–(c), (e).

§ 206.171 Definitions.

Audit, Field, Gathering, Gross proceeds, Lease products, Lessee, Net

profit share, Outer Continental Shelf, and Section 6 lease.

§ 206.172 Valuation standards-unprocessed gas.

Section 206.172 (e)(2), (i), and (k).

§ 206.173 Valuation standards-processed gas.

Section 206.173(e)(2), (i), and (k).

§ 206.174 Determination of quantities and qualities for computing royalties.

Section 206.174 (a)(1)–(2), (c)(4), and (d)(1).

§ 206.177 Determination of transportation allowances.

Section 206.177 (b)(5), (c)(2)(viii), and (e)(2)–(3).

§ 206.179 Determination of processing allowances.

Section 206.179 (c)(2)(v), (e)(2)–(3).

(2) To specify the form used to request a waiver to allowance limitations, we made the following change:

§ 206.176 Transportation allowances-general.

Section 206.176(c)(3).

This further clarifies that the lessee must use Form MMS–4393 as the application form to request an exception to exceed the regulatory allowance limitation of 50 percent for gas transportation.

§ 206.178 Processing allowances-general.

Section 206.178(c)(3).

This further clarifies that the lessee must use Form MMS–4393 as the application form to request an exception to exceed the regulatory allowance limitation of 66⅔ percent for gas processing.

f. Indian Coal

Changes to the following paragraphs involve removal of Federal references for new Subpart J—Indian Coal, and therefore will not be separately discussed:

§ 206.450 Purpose and scope.

Section 206.450 (a)–(b).

§ 206.451 Definitions.

Audit, Gross proceeds, Lease, and Lessee.

§ 206.453 Coal subject to royalties-general provisions.

Section 206.453(a), (c).

§ 206.455 Point of royalty determination.

Section 206.455 (a)–(b).

§ 206.456 Valuation standards for cents-per-ton leases.

Section 206.456(a).

§ 206.457 Valuation standards for ad valorem leases.

Section 206.457 (a), (d)(2), (h), and (j).

§ 206.458 Washing allowances-general.

Section 206.458(c).

§ 206.461 Transportation allowances-general.

Section 206.461 (a)(1)–(2), and (e).

§ 206.462 Determination of transportation allowances.

Section 206.462 (b)(3) and (c)(2)(viii).

g. Part 202—Royalties

Subpart D—Federal and Indian Gas

Section 202.151(a) is amended to revise the last sentence of this paragraph to refer to the separate subparts governing allowances for Federal and Indian gas.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on oil and gas produced from Federal and Indian lands.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned Clearance Numbers 1010–0022, 1010–0061, and 1010–0075.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects 30 CFR Parts 206 and 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 26, 1996.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is amended as set forth below:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

2. The heading for Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved] is removed and a new Subpart B—Indian Oil is added to read as follows:

Subpart B—Indian Oil

Sec.

Subpart B—Indian Oil

§ 206.50 Purpose and scope.

(a) This subpart is applicable to all oil production from Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The purpose of this subpart is to establish the value of production, for royalty purposes, consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any Federal statute, treaty, settlement

agreement between the Indian lessor and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or Indian Tribes are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.51 Definitions.

For the purposes of this subpart:

Allowance means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined by this subpart.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement that has been arrived at in the market place between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel for onshore leases.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to, reimbursements for harboring or terminating fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Load oil means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Marketing affiliate means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the

lease or in applicable leasing regulations.

MMS means the Minerals Management Service of the Department of the Interior.

Net-back method (or workback method) means a method for calculating market value of oil at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the oil and any extracted, processed, or manufactured products, or from the value of the oil or any extracted, processed, or manufactured products at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

Net profit share (for applicable Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

Oil shale means a kerogen-bearing rock (i.e., fossilized, insoluble, organic material). Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen, upon distillation, will yield liquid and gaseous hydrocarbons.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Posted price means the price specified in publicly available posted price bulletins, onshore terminal postings, or other price notices net of all adjustments for quality (e.g., API gravity, sulfur content, etc.) and location for oil in marketable condition.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in MMS Royalty Management Program Oil and Gas Payor Handbook.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

Tar sands means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains quarrying.

§ 206.52 Valuation standards.

(a)(1) The value of production, for royalty purposes, of oil from leases subject to this subpart shall be the value determined under this section less applicable allowances determined under this subpart.

(2) (i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom).

The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1) (i) The value of oil which is sold under an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, oil which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate under an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil. If the contract does not reflect the total consideration, then MMS may require that the oil sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines that the gross proceeds accruing to the lessee under an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between two contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the oil production be valued under the first applicable of paragraph (c)(2), (c)(3), (c)(4), or (c)(5) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value. If the oil production is then valued under paragraph (c)(4) or (c)(5) of this section, the notification requirements of paragraph (e) of this section shall apply.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the oil.

(c) The value of oil production from leases subject to this section which is not sold under an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area); provided, however, that those posted prices or oil sales contract prices are comparable to other contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a

reasonable sample, from the same area). In evaluating the comparability of posted prices or oil sales contract prices, the following factors shall be considered: Price, duration, market or markets served, terms, quality of oil, volume, and other factors as may be appropriate to reflect the value of the oil. If the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area);

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field (or, if necessary to obtain a reasonable sample, from the same area), and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the salability of certain types of oil;

(5) A net-back method or any other reasonable method to determine value;

(6) For purposes of this paragraph, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Indian lessee will make available, upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e) (1) Where the value is determined under paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value under paragraph (c)(4) or (c)(5) of this section. The notification shall be by letter to MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(4) or (c)(5) of this section and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on the difference computed under 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined under this subpart.

(i) The lessee is required to place oil in marketable condition at no cost to the Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Indian Tribes or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. § 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.53 Point of royalty settlement.

(a) (1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases.

(2) If the value of oil determined under § 206.52 of this subpart is based

upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the proved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this subpart. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.54 Transportation allowances—general.

(a) Where the value of oil has been determined under Section 206.52 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable, actual costs incurred by the lessee to transport oil to a point off the lease; provided, however, that no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(b) (1) Except as provided in paragraph (b)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined under § 206.52 of this subpart. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances shall the value, for royalty purposes, under any selling arrangement, be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported as provided in § 206.55. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.55 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.*

(1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(2)(i) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, the lessee shall convert whatever

consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price, or a posted price, includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

(2) The transportation allowance for non-arms-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined under paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and such allocation shall be made in a consistent and equitable manner. Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). MMS shall then determine the oil transportation allowance on the basis of the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) for Indian leases. MMS shall deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if:

(i) No FERC cost analysis exists and the FERC has declined to investigate under MMS timely objections upon filing; and

(ii) the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases that will affect the allowance. MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) MMS may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and for failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.*

(1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in

accordance with instructions provided by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

3. Subpart C—Federal and Indian Oil is amended by revising the heading to read as follows:

Subpart C—Federal Oil

4. Section 206.100 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal oil and gas leases. The purpose of this subpart is to establish the value of production, for royalty purposes, consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any Federal statute, settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the statute, lease provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to audit and adjustment.

* * * * *

5. Section 206.101 is amended by adding in alphabetical order the definition for *Netting,* revising the definitions for *Allowance, Audit, Gross proceeds, Lease products, Lessee, Net Profit share,* and deleting the definitions *BIA, Indian allottee, Indian Tribe* to read as follows:

§ 206.101 Definitions.

For the purposes of this subpart:

Allowance means a deduction in determining value for royalty purposes. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering.

* * * * *

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

* * * * *

Gross proceeds (for royalty payment purposes) means the total moneys and other consideration accruing to an oil and gas lessee for the disposition of the oil produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds, as applied to oil, also includes, but is not limited to, reimbursements for harboring or terminaling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Moneys and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

Lease products means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal leases.

Lessee means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

* * * * *

Net profit share (for applicable Federal leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting is the deduction of an allowance from the sales value by reporting a one line net sales value, instead of correctly reporting the deduction as a separate line item on the Form MMS–2014.

* * * * *

6. Section 206.102 is amended by redesignating paragraph (a)(1) as paragraph (a), removing paragraph (a)(2), and revising paragraphs (d), (i), (k), and (l) to read as follows:

§ 206.102 Valuation standards.

(a) * * *

* * * * *

(d) Any Federal lessee will make available, upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

* * * * *

(i) The lessee is required to place oil in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement or this section. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

* * * * *

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

7. Section 206.104 is amended by revising paragraphs (b)(2), and (d) to read as follows:

§ 206.104 Transportation allowances-general.

* * * * *

(b) * * *

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances shall the value, for royalty purposes, under any selling arrangement, be reduced to zero.

* * * * *

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest. If the lessee takes a deduction for transportation on the Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, the lessee may be assessed an amount under § 206.105(d).

8. In § 206.105, paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(2)(v), (c)(2)(vii), (c)(3), and (c)(4) are removed; paragraphs (c)(1)(iv), (c)(2)(iv), (c)(2)(vi), and (c)(2)(viii) are redesignated as paragraphs (c)(1)(ii), (c)(2)(ii), and (c)(2)(iii), and (c)(2)(iv) respectively; and revising paragraphs (a)(1)(i), (a)(3), (b)(1), (b)(2)(v), (b)(4), (c)(1)(i), (c)(2)(i), newly designated (c)(2)(ii), newly designated (c)(2)(iii), (d), and (e) to read as follows:

§ 206.105 Determination of transportation allowances.

(a) Arm's-length transportation contracts.

(1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Such allowances shall be subject to the provisions of paragraph (f) of this section. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.

* * * * *

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted within 3 months after the last day of the month for which the lessee requests a transportation allowance. MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

* * * * *

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment to ensure that they are reasonable and allowable. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) * * *

(i) * * *

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. MMS shall then determine the oil transportation allowance on the basis of the lessee's proposal and any additional information MMS deems necessary. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on the Form MMS–2014.

* * * * *

(c) *Reporting requirements.*

(1) *Arm's-length contracts.*

(i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.

(ii) * * *

(2) *Non-arm's-length or no contract.*

(i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS–2014.

(ii) For new transportation facilities or arrangements, the lessee's initial deduction shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(iv) * * *

(d) *Interest and assessments.*

(1) If a lessee nets a transportation allowance against the royalty value on the Form MMS–2014, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee deducts a transportation allowance on its Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining prior approval of MMS under 206.104 of this subpart, the lessee shall pay interest on the excess allowance amount taken from the date such amount is taken to the date the lessee files an exception request with MMS.

(3) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(4) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the

amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.54 from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

* * * * *

9. Subpart D is amended by revising the heading to read as follows:

Subpart D—Federal Gas

10. Section 206.150 is revised to read as follows:

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal oil and gas leases. The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute or settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the administration of oil and gas leases is discharged in accordance with the requirements of the governing mineral leasing laws and lease terms.

11. Section 206.151 is amended by adding in alphabetical order the definition for *Netting,* revising the definitions *Allowance, Audit, Gross proceeds, Lease products, Lessee, Net Profit share,* and removing the definitions *BIA, Indian allottee,* and *Indian Tribe* to read as follows:

§ 206.151 Definitions.

* * * * *

Allowance means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable costs for processing gas determined under this subpart. Transportation allowance means an allowance for the cost of moving royalty bearing substances (identifiable, measurable oil and gas, including gas that is not in need of initial separation) from the point at which it is first identifiable and measurable to the sales point or other point where value is established under this subpart.

* * * * *

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

* * * * *

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds, as applied to oil, also includes, but is not limited to, reimbursements for harboring or terminaling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

* * * * *

Lease products means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal leases.

Lessee means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

* * * * *

Net profit share (for applicable Federal leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting is the deduction of an allowance from the sales value by reporting a one line net sales value, instead of correctly reporting the deduction as a separate line item on the Form MMS–2014.

* * * * *

12. Section 206.152 is amended by revising paragraph (a)(2), removing paragraph (a)(3), and revising paragraphs (e)(2), (h), (i), (k) and (l) to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

(a) * * *

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined under this section less applicable allowances.

* * * * *

(e) * * *

(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

* * * * *

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances.

(i) The lessee is required to place gas in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

* * * * *

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. § 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

13. Section 206.153 is amended by removing paragraph (a)(3), and revising paragraphs (e)(2), (i), (k), and (l) to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(e) * * *

(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

* * * * *

(i) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

* * * * *

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

14. Section 206.154 is amended by revising paragraph (c)(4) to read as follows:

§ 206.154 Determination of quantities and qualities for computing royalties.

* * * * *

(c) * * *

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal leases that is processed in the same plant.

* * * * *

15. Section 206.155 is amended by revising paragraph (b) to read as follows:

§ 206.155 Accounting for comparison.

* * * * *

(b) The requirement for accounting for comparison contained in the terms of leases will govern as provided in Section 206.150(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

16. Section 206.156 is amended by revising paragraphs (c)(3), and (d) to read as follows:

§ 206.156 Transportation allowances—general.

* * * * *

(c)* * *

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest. If the lessee takes a deduction for transportation on the Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, he may be assessed an additional amount under 206.157(d).

17. In § 206.157, paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(2)(v), (c)(2)(vii), (c)(3) and, (c)(4) are removed; paragraphs (c)(1)(iv), (c)(2)(iv), (c)(2)(vi), and (c)(2)(viii) are redesignated as paragraphs (c)(1)(ii), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) respectively; and revising paragraphs (a)(1)(i), (a)(3), (b)(1), (b)(2)(v), (b)(4), (c)(1)(i), (c)(2)(i), newly designated (c)(2)(ii), newly designated (c)(2)(iii), (d), (e)(1) and (e)(2) to read as follows:

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Such allowances shall be subject to the provisions of paragraph (f) of this section. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.

* * * * *

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall

submit all relevant data to support its proposal. MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on the Form MMS–2014.

* * * * *

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2)* * *

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on the Form MMS–2014.

* * * * *

(c) *Reporting requirements.*

(1) *Arm's-length contracts.* (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.

* * * * *

(2) *Non-arm's-length or no contract.* (i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS–2014.

(ii) For new transportation facilities or arrangements, the lessee's initial deduction shall include estimates of the allowable gas transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

* * * * *

(d) *Interest and assessments.* (1) If a lessee nets a transportation allowance against the royalty value on the Form MMS–2014, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee deducts a transportation allowance on its Form MMS–2014 that exceeds 50 percent of the value of the gas transported without obtaining prior approval of MMS under section 206.156, the lessee shall pay interest on the excess allowance amount taken from the date such amount is taken to the date the lessee files an exception request with MMS.

(3) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(4) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be required to pay additional royalties due plus interest computed under 30 CFR 218.54 from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

* * * * *

18. Section 206.158 is amended by revising paragraphs (c)(3) and (e) to read as follows:

§ 206.158 Processing allowances—general.

* * * * *

(c)* * *

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

* * * * *

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest. If the lessee takes a deduction for transportation on the Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, he may be assessed an additional amount under 206.159(d).

19. In § 206.159, paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(2)(v), (c)(2)(vii), (c)(3), and (c)(4) are removed; paragraphs (c)(1)(iv), (c)(2)(iv), (c)(2)(vi), and (c)(2)(viii) are redesignated as paragraphs (c)(1)(ii), (c)(2)(ii), (c)(2)(iii) and (c)(2)(iv) respectively; and revising paragraphs (a)(1)(i), (a)(3), (b)(1), (b)(2)(v), (c)(1)(i), (c)(2)(i) newly designated (c)(2)(ii), newly designated (c)(2)(iii), (d), (e)(1) and (e)(2) to read as follows:

§ 206.159 Determination of processing allowances.

(a) *Arm's-length processing contracts.*

(1)(i) For processing costs incurred by a lessee under an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review,

audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.

* * * * *

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing. The lessee must submit the allocation proposal within 3 months of claiming the allocated deduction on Form MMS–2014.

* * * * *

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form MMS–2014. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2)* * *

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(c) *Reporting requirements* (1) *Arm's-length contracts.* (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.

* * * * *

(2) *Non-arm's-length or no contract.*

(i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS–2014.

(ii) For new processing plants, the lessee's initial deduction shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant or, if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(d) *Interest and assessments.*

(1) If a lessee nets a processing allowance against the royalty value on the Form MMS–2014, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee deducts a processing allowance on its Form MMS–2014 that exceeds 66⅔ percent of the value of the gas processed without obtaining prior approval of MMS under Section 206.158, the lessee shall pay interest on the excess allowance amount taken from the date such amount is taken to the date the lessee files an exception request with MMS.

(3) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(4) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.*

(1) If the actual processing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.54 from the allowance reporting period when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual processing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

* * * * *

20. The subpart heading Subpart E—Solid Minerals, General [Reserved] is removed and a new Subpart E—Indian Gas is added to read as follows:

Subpart E—Indian Gas

Subpart E—Indian Gas

§ 206.170 Purpose and scope.

(a) This subpart is applicable to all gas production from Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any statute, treaty, or settlement agreement between the Indian lessor and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, treaty provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.171 Definitions.

For purposes of this subpart:

Allowance means an approved or an (MMS)-initially accepted deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable, actual costs incurred by the lessee for

processing gas, or an approved or MMS-initially accepted deduction for costs of such processing, determined pursuant to this subpart. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is pursuant to common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means the process of raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state pursuant to standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM operations personnel for onshore leases.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States pursuant to a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser pursuant to a sales contract typical for the field or area.

Marketing affiliate means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

MMS means the Minerals Management Service of the Department of the Interior.

Net-back method (or work-back method) means a method for calculating market value of gas at the lease.

Pursuant to this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share (for applicable Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Posted price means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Selling arrangement means the individual contractual arrangements pursuant to which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

Warranty contract means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

§ 206.172 Valuation standards—unprocessed gas.

(a) (1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing (including all gas where the lessee's arm's-length contract for the sale of that gas prior to processing provides for the value to be determined on the basis of a percentage of the purchaser's proceeds resulting from processing the gas). This section also applies to processed gas that must be valued prior to processing in accordance with § 206.175 of this subpart. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.173 of this subpart shall apply instead of this section.

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3) (i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value of production for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas sold pursuant to arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1) (i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate. Also, where the lessee's arm's-length contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, the value of production, for royalty purposes, shall never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then MMS may require that the gas sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the gas production be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract;

provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale pursuant to its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid pursuant to, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds pursuant to arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d) (1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed in paragraph (d)(1) of this section shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e) (1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Indian lessee will make available upon request to the authorized MMS or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method pursuant to paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, pursuant to no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place gas in marketable condition at no cost to the Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims pursuant to its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed pursuant to its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value pursuant to this section shall be considered final or binding as against the Indian Tribes or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation, processing, or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner

in accordance with applicable law and regulations. All requests for information about determinations made pursuant to this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly pursuant to the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.173 Valuation standards—processed gas.

(a) (1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.172 of this part. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

(2) The value of production, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to section of this part, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(3) (i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products sold pursuant to arm's-length contracts from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1) (i) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the residue gas or gas plant product sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the residue gas or gas plant product be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale pursuant to its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid pursuant to, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds pursuant to arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d) (1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than

the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For the purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed by paragraph (d)(1) of this section shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e) (1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) The Indian lessee will make available upon request to the authorized MMS, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method pursuant to paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed on that difference pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, pursuant to no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(i) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims pursuant to its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed pursuant to its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value pursuant to this section shall be considered final or binding against the Indian Tribes or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made pursuant to this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly pursuant to the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.174 Determination of quantities and qualities for computing royalties.

(a) (1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM for onshore leases.

(2) If the value of gas determined pursuant to § 206.172 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b) (1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.173 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value shall be adjusted for

the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Indian leases that is processed in the same plant.

(d) (1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM .

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.171(c), royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.175 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of (1) the combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.173 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.52 of this subpart; or (2) the value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.172 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.170(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.176 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.172 or § 206.173 of this subpart at a point (*e.g.*, sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 206.177.

(c) (1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.172 of this subpart, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.172 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.173 of this subpart the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.173 of this subpart. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation necessary for MMS to make a determination. Pursuant to no circumstances shall the value for royalty purposes pursuant to any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.177 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.*

(1) (i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas,

residue gas and/or gas plant products pursuant to that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(2) (i) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this subpart.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988, or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation pursuant to an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted pursuant to a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the

reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3) (i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee begins the transportation, whichever is later, unless MMS approves a longer period. MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) for Indian leases. MMS shall deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) No FERC cost analysis exists and the FERC has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the tariff significantly exceeds the lessee's actual costs for transportation as determined pursuant to this section.

(c) *Reporting requirements.*

(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4295 (and Schedule 1) prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4295 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii), and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation pursuant to the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based

on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.*

(1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be entitled to a credit, without interest.

(2) For lessees transporting production from onshore Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or state regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.178 Processing allowances—general.

(a) Where the value of gas is determined pursuant to § 206.173 of this subpart, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c) (1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.173 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 206.176 of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as ''sweetening,'' no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2) (i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry

conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.179 Determination of processing allowances.

(a) Arm's-length processing contracts.

(1) (i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas pursuant to that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If MMS determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then MMS shall require that the processing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing pursuant to an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted pursuant to a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

(2) The processing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated

only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. MMS may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts; if MMS grants the exception, the lessee shall use as its processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.*

(1) *Arm's-length contracts.*

(i) With the exception of those processing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4109 (and Schedule 1) prior to the time, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page 1 of Form MMS–4109 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purpose of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations became effective.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing pursuant to the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or no contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from Indian leases. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.*

(1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.*

(1) If the actual gas processing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance period, the lessee shall be entitled to a credit, without interest.

(2) For lessees processing production from onshore Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other processing cost determinations.* The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

21. Subpart F—Coal is amended by revising the heading to read as follows:

Subpart F—Federal Coal

22. Section 206.250 is amended by removing paragraph (d) and revising paragraphs (a) and (b) to read as follows:

§ 206.250 Purpose and scope.

(a) This subpart is applicable to all coal produced from Federal coal leases. The purpose of this subpart is to establish the value of coal produced for royalty purposes, of all coal from Federal leases consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute or settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart then the statute, lease provision, or settlement shall govern to the extent of that inconsistency.

* * * * *

23. Section 206.251 is amended by adding in alphabetical order a definition for *Netting,* revising the definitions *Allowance, Audit, Gross proceeds; Lease, Lessee,* and removing the definitions *BIA, Indian allottee,* and *Indian Tribe* to read as follows:

§ 206.251 Definitions.

* * * * *

Allowance means a deduction used in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant.

* * * * *

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

* * * * *

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

Lessee means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

* * * * *

Netting is the deduction of an allowance from the sales value by reporting a one line net sales value, instead of correctly reporting the deduction as a separate line item on the Form MMS–2014.

* * * * *

24. Section 206.253 is amended by revising paragraphs (a) and (c) to read as follows:

§ 206.253 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM under 43 CFR part 3400) from a Federal lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

* * * * *

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal leases shall be allocated to such leases regardless of whether it is stored on Federal lands. The lessee shall maintain accurate records to determine to which individual Federal lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on

coal for which a royalty has already been paid.

* * * * *

25. Section 206.255 is amended by revising paragraphs (a) and (b) to read as follows:

§ 206.255 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

* * * * *

26. Section 206.256 is amended by revising paragraph (a) to read as follows:

§ 206.256 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

* * * * *

27. Section 206.257 is amended by revising paragraphs (a), (d)(2), (h), (j), and (k) to read as follows:

§ 206.257 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined under this section, less applicable coal washing allowances and transportation allowances determined under §§ 206.258 through 206.262 of this subpart, or any allowance authorized by § 206.265 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

* * * * *

(d) * * *

(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales value and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

* * * * *

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

* * * * *

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances under § 206.265 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

28. Section 206.258 is amended by revising paragraph (c) to read as follows:

§ 206.258 Washing allowances—general.

* * * * *

(c) Lessees shall not disproportionately allocate washing costs to Federal leases.

* * * * *

29. Section 206.259 is amended by removing paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(2)(v), (c)(2)(vii), (c)(3), and (c)(4); redesignating paragraphs (c)(1)(iv), (c)(2)(iv), and (c)(2)(vi) as (c)(1)(ii), (c)(2)(ii), and (c)(2)(iii) respectively; and by revising paragraphs (a)(1), (b)(1), (b)(2)(v), (c)(1)(i), (c)(2)(i), newly designated (c)(2)(ii), newly designated (c)(2)(iii), (d), and (e)(1) to read as follows:

§ 206.259 Determination of washing allowances.

(a) *Arm's-length contracts.*

(1) For washing costs incurred by a lessee under an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS–2014.

* * * * *

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS–2014. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual washing allowance.

(2) * * *

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(c) *Reporting requirements.*

(1) *Arm's-length contracts.*

(i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.

(ii) * * *

(2) *Non-arm's-length or no contract.*

(i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS–2014.

(ii) For new washing facilities or arrangements, the lessee's initial washing deduction shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the processing system or, if such data are not available, the lessee shall use estimates based upon industry data for similar washing systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the

allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(d) *Interest and assessments.*

(1) If a lessee nets a washing allowance on the Form MMS–2014, then the lessee shall be assessed an amount up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.* (1) If the actual coal washing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.202 from the date when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual washing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

* * * * *

30. Section 206.261 is amended by revising paragraphs (a)(1), (a)(2), and (e) to read as follows:

§ 206.261 Transportation allowances—general.

(a) * * *

(1) Transport the coal from a Federal lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from a Federal lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point. In-mine transportation costs shall not be included in the transportation allowance.

* * * * *

(e) Lessees shall not disproportionately allocate transportation costs to Federal leases.

31. Section 206.262 is amended by removing paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(2)(v), (c)(2)(vii), (c)(3) and (c)(4); redesignating paragraphs (c)(1)(iv), (c)(2)(iv), (c)(2)(vi), and (c)(2)(viii) as paragraphs (c)(1)(ii), (c)(2)(ii), (c)(2)(iii), and (c)(2)(v) respectively; and revising paragraphs (a)(1), (b)(1), (b)(2)(v), (b)(3), (c)(1)(i), (c)(2)(i), newly designated (c)(2)(ii), newly designated (c)(2)(iii), (d) and (e) to read as follows:

§ 206.262 Determination of transportation allowances.

(a) *Arm's-length contracts.*

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.

* * * * *

(b) Non-arm's-length or no contract.

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) * * *

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) A lessee may apply to MMS for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. MMS will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency or by a State regulatory agency (for Federal leases). MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if:

(i) No Federal or State regulatory agency costs analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate under MMS timely objections upon filing; and

(ii) The rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) Reporting requirements.

(1) *Arm's-length contracts.*

(i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.

(ii) * * *

(2) *Non-arm's-length or no contract.*

(i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on Form MMS–2014.

(ii) For new transportation facilities or arrangements, the lessee's initial deduction shall include estimates of the allowable coal transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(iv) * * *

(d) *Interest and assessments.*

(1) If a lessee nets a transportation allowance on Form MMS–2014, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) * * *

(3) * * *

(e) *Adjustments.*

(1) If the actual coal transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.202 from the date when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual transportation allowance is greater than amount the lessee has taken on Form MMS–2014 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

* * * * *

32. A new Subpart J is added to read as follows:

Subpart J—Indian Coal

Sec.

Subpart J—Indian Coal

§ 206.450 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Indian Tribal and allotted leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the Indian lessor and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.451 Definitions.

Ad valorem lease means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

Allowance means an approved, or an MMS-initially accepted deduction in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an approved or MMS-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an approved MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

Area means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Coal means coal of all ranks from lignite through anthracite.

Coal washing means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Indian lessor. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for an Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

Lessee means any person to whom the Indian Tribe or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality coal means coal has similar chemical and physical characteristics.

Marketable condition means coal that is sufficiently free from impurities and otherwise in a condition that it will be

accepted by a purchaser under a sales contract typical for that area.

Mine means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

MMS means the Minerals Management Service of the Department of the Interior.

Net-back method means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

Net output means the quantity of washed coal that a washing plant produces.

Person means by individual, firm, corporation, association, partnership, consortium, or joint venture.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

§ 206.452 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) from an Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Indian leases shall be allocated to such leases regardless of whether it is stored on Indian lands. The lessee shall maintain accurate records to determine to which individual Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

§ 206.453 Quality and quantity measurement standards for reporting and paying royalties.

(a) For leases subject to § 206.456 of this subpart, the quality of coal on which royalty is due shall be reported on the basis of percent sulfur, percent ash, and number of British thermal units (Btu) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, or if the contract does not specify the intervals of coal quality determination, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry-recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR Part 216.

(b) For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR Part 216 and on the Report of Sales and Royalty Remittance, Form MMS–2014, as required under 30 CFR Part 210.

§ 206.454 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Indian coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 206.455(d) of this subpart.

§ 206.455 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR Part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR Part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 206.456 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

§ 206.456 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determined pursuant to § 206.457 through § 206.461 of this subpart, or any allowance authorized by § 206.464 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b) (1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), and (b)(5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value

which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the coal production be valued pursuant to paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS' satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c) (1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) Other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the salability of certain types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), or (c)(2)(iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

(d) (1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS' prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) An Indian lessee will make available upon request to the authorized MMS or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on the Form MMS–2014 using a valuation method authorized by paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section, and each time there is a change in a method under paragraphs (c)(2)(iv) or (c)(2)(v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to § 206.457 through § 206.461 and § 206.464 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee

fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Indian Tribes or allottees until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances pursuant to § 206.457 through 206.461 and § 206.464 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease or applicable law.

§ 206.457 Washing allowances—general.

(a) For ad valorem leases subject to § 206.456 of this subpart, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 206.456 of this subpart was based upon like-quality unwashed coal. Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.461 of this subpart reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit, without interest.

(c) Lessees shall not disproportionately allocate washing costs to Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

§ 206.458 Determination of washing allowances.

(a) *Arm's-length contracts.*

(1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then MMS may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If MMS determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and

installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (b)(2)(iv) (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) *Reporting requirements.*

(1) *Arm's-length contracts.*

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4292 received by the end of the month that the Form MMS–2014 is due shall be considered to be received timely.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Washing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those washing allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4292 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial Form MMS–4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS–4292. The data shall be provided within a

reasonable period of time, as determined by MMS.

(vii) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) MMS may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.*

(1) If a lessee deducts a washing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.*

(1) If the actual coal washing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit, without interest.

(2) The lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other washing cost determinations.* The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

§ 206.459 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

§ 206.460 Transportation allowances—general.

(a) For ad valorem leases subject to § 206.456 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from an Indian lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.456 of this subpart reduce the value of coal under any selling arrangement to zero.

(c) (1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.202, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Indian leases.

§ 206.461 Determination of transportation allowances.

(a) *Arm's-length contracts.*

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When

MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.*

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or paragraph (b)(2)(iv)(B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in Standard and Poor's Bond Guide for the first month of the reporting period of which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to MMS for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. MMS will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency for Indian leases. MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if:

(i) No Federal regulatory agency cost analysis exists and the Federal regulatory agency has declined to investigate pursuant to MMS timely objections upon filing; and

(ii) The rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements.*

(1) *Arm's-length contracts.*

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Reports of Sales and Royalty Remittance.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) *Non-arm's-length or no contract.*

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based on estimated costs.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. Form MMS–4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract-based transportation allowances that are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4293. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(viii) If the lessee is authorized to use its Federal-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) MMS may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.*

(1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.*

(1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be to a credit, without interest.

(2) The lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.462 Contract submission.

(a) The lessee and other payors shall submit to MMS, upon request, contracts for the sale of coal from ad valorem leases subject to this subpart. MMS must receive the contracts within a reasonable period of time, as specified by MMS. Lessees shall include as part of the submittal requirements any contracts, agreements, contract amendments, or other documents that affect the gross proceeds received for the sale of coal, as well as any other information regarding any consideration received for the sale or disposition of coal that is not included in such contracts. At the time of its contract submittals, MMS may require the lessee to certify in writing that it has provided all documents and information that reflect the total consideration provided by purchasers of coal from ad valorem leases subject to this subpart. Information requested under this section may include contracts for both ad valorem and cents-per-ton leases and shall be available in the lessee's offices during normal business hours or provided to MMS at such time and in such manner as may be requested by authorized Department of the Interior personnel. Any oral sales arrangement negotiated by the lessee must be placed in a written form and be retained by the lessee. Nothing in this section shall be construed to limit the authority of MMS to obtain or have access to information pursuant to 30 CFR Part 212.

(b) Lessees and other payors shall designate, for each contract submitted pursuant to this section, whether the contract in arm's-length or non-arm's-length.

(c) A lessee's or other payor's determination that its contract is arm's-length is subject to future audit to verify that the contract meets the criteria of the arm's-length contract definition in § 206.251 of this subpart.

(d) Information required to be submitted under this section that constitutes trade secrets and commercial and financial information that is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the lessee or other payor, except as otherwise provided by law or regulation.

§ 206.463 In-situ and surface gasification and liquefaction operations.

In an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to MMS. MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

§ 206.464 Value enhancement of marketable coal.

If, prior to use, sale, or other disposition, the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with § 206.456(h) of this subpart, the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 206.465(c)(2)(i) through (iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with § 206.456(c)(2)(v) of this subpart and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by MMS-approved processing costs and procedures including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 206.458(b)(2)(v) of this subpart.

PART 202—ROYALTIES

1. The authority citation for part 202 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*, 1801 *et seq.*

Subpart D—Federal and Indian Gas

2. Section 202.151 is amended by revising paragraph (a) to read as follows:

§ 202.151 Royalty on processed gas.

(a)(1) A royalty, as provided in the lease, shall be paid on the value of:

(i) any condensate recovered downstream of the point of royalty settlement without resorting to processing; and

(ii) residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this subpart.

(2) MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with 30 CFR part 206 subpart D for gas production from Federal leases and 30 CFR part 206 subpart E for gas production from Indian leases.

* * * * *

[FR Doc. 96–2641 Filed 2–9–96; 8:45 am]

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Federal Register

Monday
February 12, 1996

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

1996 Summer Olympic Games, Atlanta, GA; Airspace and Flight Operations Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28420 Special Federal Aviation Regulation (SFAR) No. 74]

RIN 2120–AGO2

Airspace and Flight Operations Requirements for the 1996 Summer Olympic Games, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR), applicable May 15, 1996, through August 11, 1996, establishes airspace and flight operations requirements for the XXVI Olympic Games. The FAA believes this regulation is necessary for the security of the venues, safe operation, and management of aircraft operating to, within, and from these areas, and to prevent any unsafe congestion of sightseeing and other aircraft over the various game sites.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Apple, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The 1996 Olympic Games will be held from July 19 through August 4, 1996, primarily in the Atlanta, Georgia, area and will mark the 100th anniversary of the modern Olympic Games. The event is the largest single, peace-time event in the history of the world. Over 350,000 visitors a day are expected to attend the games. In terms of air traffic demand, the pregame, game, and postgame activities from July 19 through August 4 are expected to generate substantial increases in aircraft operations in the Atlanta area as well as other sites in the United States. Those sites are:

The Olympic Village—Atlanta, GA
The Olympic Ring—Atlanta, GA
Wolf Creek Skeet Range—Atlanta, GA
Atlanta Beach—Jonesboro, GA
International Horsepark—Covington, GA
Stone Mountain Park—Stone Mountain, GA
Lake Sidney Lanier—Gainesville, GA
Sanford Stadium—Athens, GA
Golden Park—Columbus, GA
Lee College—Cleveland, TN
U.S. Highway 64—Tennessee
Ocoee River—Tennessee
Legion Field—Birmingham, AL
The Olympic Village—Savannah, GA
Sail Harbor and Wilmington River Transit Zone—Savannah, GA
Sailing Venue—Savannah, GA
The Citrus Bowl—Orlando, FL
The Orange Bowl—Miami, FL
RFK Stadium—Washington, DC
The Olympic Village—Davie, FL
The Olympic Village—Columbus, GA

The Special Federal Aviation Regulation (SFAR)

This rule establishes an SFAR to provide for the security of persons and property in the air and on the ground, and for the safe and efficient movement of air traffic during the Olympic period. To accomplish this goal, the SFAR is designed for flexibility and adaptability.

Traffic Management Arrival/Departure Slot Reservation System

During the busy Olympic period, the FAA must ensure continued safe and efficient use of airspace and air traffic control capacity. To achieve this objective while minimizing disruption to the air traveling public, the FAA establishes an arrival/departure slot reservation system for fixed-wing aircraft to manage air traffic into and out of key airports in the Atlanta area.

For purposes of this SFAR the following definitions apply: (1) Domestic air transportation (domestic)—the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in commerce originating in the United States and commencing any place within the United States. (2) Foreign air transportation (foreign)—the carriage by aircraft of persons or property as a common carrier for compensation or hire, or carriage of mail by aircraft, in commerce between a place in the United States and any place outside of the United States. (3) Scheduled operations—foreign and domestic air carrier and cargo operations published in the Official Air Line Guide (OAG) as of June 30, 1996, and/or routine consistent operations operated same time, day and number of days per week as in regularly scheduled cargo operations. This category also includes additional operations by scheduled operators at the same airport if those operations are listed in the OAG as of June 30, 1996. (4) Non-scheduled operations—foreign and domestic charters and cargo operations not published in the OAG as of June 30, 1996, and/or not operated on a routine consistent basis during the same time, day and number of days per week, excluding helicopters. This category also includes additional operations by scheduled operators at the same airport that are not listed in the OAG as of June 30, 1996. (5) Other operations—all operations conducted by operators that do not hold either an air carrier certificate or an operating certificate for common carriage issued under SFAR 38–2 or Part 119 of the Federal Aviation Regulations or any operations conducted under Part 129 of the Federal Aviation Regulations. These operations exclude helicopters and include, but are not limited to, general aviation and business operations conducted under Part 91.

The slot reservation system will be applicable to visual flight rules (VFR) arrivals at four specified airports, VFR departures at four specified airports, and to non-scheduled instrument flight rules (IFR) operations at 11 specified airports. As with most special events, airborne holding will not be authorized in lieu of a ground delay. Thus, aircraft without reservations may anticipate lengthy delays at departure airports.

VFR arrival slot reservations are required for: Cobb County-McCollum Field Airport (RYY), Marietta, GA; DeKalb-Peachtree Airport (PDK), Atlanta, GA; Fulton County-Brown Field Airport (FTY), Atlanta, GA; and Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA.

VFR departure slot reservations are required for: Cobb County Airport-McCollum Field (RYY), Marietta, GA; DeKalb-Peachtree Airport (PDK), Atlanta, GA; Fulton County-Brown Field Airport (FTY), Atlanta, GA; and Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA.

Non-scheduled IFR slot reservations are required for: Clayton County-Tara Field Airport (4A7), Hampton, GA; Cobb County-McCollum Field Airport (RYY), Marietta, GA; Covington Municipal Airport (9A1), Covington, GA; DeKalb-Peachtree Airport (PDK), Atlanta, GA; Ben Epps Field Airport (AHN), Athens, GA; Peachtree City-Falcon Field Airport (FFC), Peachtree City, GA; Fulton County Airport-Brown Field Airport (FTY), Atlanta; GA; Lee Gilmer Memorial Airport (GVL), Gainesville, GA; Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA; the William B. Hartsfield Atlanta International Airport (ATL), Atlanta, GA; and Richard B. Russell Airport (RMG), Rome, GA.

Beginning May 15, 1996, through June 30, 1996, non-scheduled operators may submit their request for slot reservations for the affected airports via Internet

address [atcslots@mail.hq.faa.gov] or facsimile number [(770) 946–7938]. Request confirmations will be provided within 72 hours of receipt via the form of request. From the period July 1 through July 13, 1996, the FAA will not receive any requests. However, beginning July 14, 1996, 7:00 a.m. (EDT), all operators can reserve VFR arrival and departure or IFR arrival and departure slots at these airports by calling 1–800–96FAA96 (1–800–963–2296), 24 hours a day. Reservation slots may be reserved no sooner than 72 hours before your estimated time of arrival or departure.

The following information must be provided for all requests (reservation requests beginning May 15 through June 30, 1996, via Internet address or facsmile number, and via the telephone number as of July 14, 1996): Arrival Reservations: destination airport, estimated time of arrival, call sign, direction of arrival to the Atlanta area and type aircraft; Departure Reservations: departure airport, estimated time of departure, call sign, destination airport, first fix after departure and type aircraft; and Confirmation Method: operator's Internet address or facsimile number for return confirmation for arrival and departure reservations for those reservations processed prior to July 1, 1996.

Temporary Flight Restriction (TFR) Areas

The FAA establishes TFR areas over the Olympic Villages and competition sites. The establishment of TFR areas over the competition venues would result in the restriction of aircraft operations in these areas; however, access to these areas may be accommodated with an appropriate authorization from the designated using agency. Aircraft operating under exclusions approved by the Administrator are required to contact the designating using agency for appropriate authorization to enter a TFR. ATC will retain the ability to manage aircraft through the TFR areas in accordance with normal traffic flows.

Operating restrictions within the airspace overlying competition venues are established for the period from three hours before to three hours after each event. The additional time that the restrictions are imposed, before and after each event, will accommodate the observation and planning of ground traffic movement as well as facilitate the orderly movement of aircraft in and through the airspace above each event. Flight operations will be restricted within the airspace from the surface to approximately 2500 feet above the ground (AGL) to provide a safe environment.

These TFR areas generally will be circular areas of 1 to 4 NM in radius from the surface to approximately 2,500 AGL. Aircraft operations through, into, or out of these TFR areas will not be allowed during the effective dates and times unless specifically authorized by the designated using agency or ATC.

The locations, dimensions, effective times of the TFR area will be published for use by all pilots on air navigation charts and in the Federal Register with specific details disseminated by NOTAM. Requests for access to the airspace areas can be obtained by contacting the using agency for the particular venue as designated via NOTAM.

Certain Olympic venues fall within Class B surface area; specifically, RFK Stadium in Washington, DC, Wolf Creek Skeet Range in Atlanta, GA, and The Orange Bowl in Miami, Fl. These venues will be charted along with those outside of Class B airspace to ensure consistency.

Exceptions

This SFAR contains provisions to provide flexible and efficient management and control of air tariff, such as the authority to give priority to or exclude from certain requirements of the special regulation, flight operations dealing with or containing essential military, medical emergency, rescue, law enforcement, public health and welfare, Presidential, Olympic family, and heads of state. However, regardless of any exclusion of a requirement of this SFAR, the requirement to contact the designated using agency for access to a TFR is mandatory.

Discussion of Comments

The proposed Airspace and Flight Operations requirements for the 1996 Summer Olympic Games were published in a notice of proposed rulemaking (NPRM) on December 29, 1995 (60 FR 67506).

The FAA received seven written comments in reference to the NPRM. Responding to the notice were the Aircraft Owners and Pilots Association (AOPA), Federal Express (FedEx), Delta Air Lines, Air France, Scandinavian Airlines System (SAS), National Air Carrier Association, Inc. (NACA), and Georgia Emergency Management Agency (GEMA). AOPA commented that it does not oppose the establishment of TFRs and reservation requirements outlined in the NPRM. Several commenters supported the NPRM in concept and acknowledged that the slot reservations, as proposed, were essential.

The following is representative of the issues presented to the docket: FedEx believes that the imposition of regulatory barriers would impede its ability to conduct special, non-scheduled air cargo operations into and out of Atlanta, GA. FedEx also expressed concern that the slot reservation program would adversely impact its ability to service the Atlanta area. As a result, FedEx recommends that scheduled cargo service operations be exempted from the slot reservation program.

The FAA is unclear of FedEx's definition of 'special non-scheduled' operation. The final rule specifies that Scheduled cargo operations, such as those conducted by FedEx, are exempt from the slot reservation program. The definition of a Scheduled operation includes domestic cargo operations that are routine consistent operations operated same time, day and number of days per week. Non-scheduled operations have the opportunity to request a slot beginning May 15 through June 30, 1996, via Internet address or facsimile number or by telephone on July 14, 1996. However, any operation not published in the OAG as of June 30, 1996, and not operated in a routine consistent manner would constitute an operation under the Other category and would still require a slot reservation. Operations are restricted under this SFAR for the period July 17 through August 6, 1996.

Delta Air Lines commented that since Atlanta is a primary hub for Delta, it is necessary that the following activities be conducted without meeting the slot reservation requirement: (1) pilot training conducted during Olympic off peak hours, (2) ferry flights into or out of Atlanta to meet contractual obligations, (3) unanticipated routine mechanical diversions, and (4) unanticipated aircraft diversions due to weather. Delta stated that these operations may result in an additional 5 to 10 flights per day. Also, Delta commented that an additional 5 to 10 commercial flights per day may be needed to accommodate Olympic traffic.

The FAA has determined that flights conducted during off peak hours will have minimal problems operating within their preferred time; however, reservations will be required. For those unscheduled flights during peak Olympic hours, the FAA contends that slot reservations remain necessary for these operations to provide for the safe operation and management of aircraft operating to, within, and from these areas, and to prevent any unsafe

congestion in the Atlanta area. Therefore, Delta's above-described activities will not be exempted from the requirements of this SFAR.

Air France recognizes and supports the FAA's concern for the safety of operations during the Olympic games. However, Air France and SAS suggest that the language in the SFAR clarify the slot reservation requirements for Scheduled and Non-scheduled international operations. Air France suggested the establishment of a procedure that will allow carriers such as Air France to request a slot at least 120 days in advance of scheduled arrival or departure and allow for a trade of slots (one for one) but that the slots not be bought or sold.

The FAA agrees with their request for clarification on the slot reservation requirements and has defined Scheduled, Non-scheduled, and Other operations in the rule. Furthermore, the rule specifies the procedures for Non-scheduled operations to request a slot reservation beginning May 15 through June 30, 1996, via Internet address or facsimile number. The telephone slot reservation system will be available to all operators starting July 14, 1996.

The FAA disagrees with the request by Air France to allow 120 days in advance to request a slot reservation. The FAA contends that the 60 days advance provision is adequate for Non-scheduled operations.

The FAA agrees with Air France's request to trade slots on a (one-for-one basis) and that slots should not be bought or sold. The FAA provides further clarification by restricting the trade of slots only within the same company or air carrier.

NACA agrees that the slot reservation system is essential; however, it is concerned that all operations have equal access to slots and that those Scheduled operations not included in the OAG are not considered Scheduled for the purpose of this SFAR. NACA suggested that the submitted schedule for Miami Air International be included in the OAG information.

The FAA has defined Scheduled operations to include those operations published in the OAG as of June 30, 1996, and/or routine consistent operations operated same time, day and number of days per week. Miami Air International will be treated on an equal and consistent basis as any other Non-scheduled operator. Miami Air International's schedule information may be submitted beginning May 15, 1996, via Internet address or facsimile number. The FAA is unable to incorporate that schedule information under this SFAR rulemaking.

GEMA objected to the proposed broad scope of exclusions to the SFAR that may be granted at the discretion of the Administrator listed in the amendatory section, section A.3(b) (1)–(8). GEMA commented that aircraft operating under an exemption of this SFAR could enter and exit the TFRs without any communication or coordination with the using agency. It stated that unidentified aircraft operating within the designated TFR area would present a major security problem. GEMA suggested exemptions not be granted under this paragraph.

The FAA does not concur with GEMA's recommendation to disallow exclusion authority in this SFAR. The FAA believes that the exclusion authority is necessary for unusual situations and that it is imperative to have that authority in the interest of aviation safety. For additional clarification, the rule states that aircraft granted an exclusion to this SFAR are not relieved of the responsibility to contact the designated using agency for authorization prior to entering a TFR.

In addition, GEMA recommended that VFR slot reservations not apply to public safety aircraft. It stated that many public safety flights are conducted in response to emergency situations for which there can be no prior coordination. The FAA responds that aircraft operating in an emergency capacity will be given priority handling and will not be required to obtain a slot reservation. An emergency operation would be handled the same as in today's air traffic environment.

Obtaining U.S. Air Navigation Charts

The following provides information on how to obtain the special air navigation charts for the Olympic Games as well as other air navigation charts for use in the U.S.

The National Ocean Service (NOS) publishes and distributes aeronautical charts of the U.S. National airspace system (NAS). Charts are readily available through a network of sales agents located at and near principal civil airports. Because of the large variety, all NOS products may not be available locally; users can procure these products directly from NOS. Chart prices, subscription rates, and catalogs of related publications are available on request and are obtainable by writing to: National Oceanic and Atmospheric Administration, National Ocean Service, Distribution Branch, N/CG33, Riverdale, Maryland 20737, USA, Phone (301) 436–6990—General Information: (301) 436–6993, Subscription Only: (301) 436–8194—One Time Sales Only.

NOS products will be shipped via United Parcel Service, First Class Mail, or priority package within the U.S. For foreign surface shipment to addresses in other countries, please add 5 percent to the total cost of order. Please write to NOS for a transportation cost quotation if faster foreign delivery is required. All mail order purchases must be accompanied by check or money order made payable to ''NOS, Department of Commerce, N/CG33''. Remittance must be made in U.S. funds; i.e., by check payable on a U.S. bank, or by international money order. Returned checks will result in cancellation of orders.

Chart sales offices are maintained at the following locations:

National Ocean Service, Chart Sales & Control Data Office, 701 C Street, Anchorage, Alaska 99513, USA

National Ocean Service, Chart Sales Office, 6501 Lafaytte Avenue, Riverdale, Maryland 20737, USA

Pacific Marine Center, National Ocean Service, 1801 Fairview Avenue East, Seattle, Washington 98102, USA

Atlantic Marine Center, National Ocean Service, 439 West York Street, Norfolk, Virginia 23510, USA.

Chart prices are subject to recomputation, based on cost of production, in accordance with Federal law. Price changes, when required, will be published 60 days in advance of the effective date.

The first of 13 charts that will show some of the Olympic TFR's will be published beginning with an effective date of February 1, 1996.

Notice to Airmen (NOTAM) Information

ATC and air traffic flow management systems will monitor and assess the air traffic demand so that restrictions are kept to an essential minimum. To assure maximum flexibility, NOTAMs will be issued to announce all restrictions and other actions including the lifting of any restrictions taken by the FAA in response to changing airport and air traffic conditions.

Time-critical aeronautical information that is of a temporary nature or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the National NOTAM system. All domestic operators planning flight to the Olympics need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information. NOTAM D information could affect a pilot's decision to make a flight. NOTAM D pertains to information on

airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM will contain information which is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information will also be provided to international operators in the form of International NOTAMs. NOTAMs are distributed through the National Communications Center in Kansas City, Missouri, USA, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators should consult the biweekly Notices to Airmen Domestic/International publication. This publication contains the NOTAM FDC and D NOTAMs. Special information, including graphics, will be published in the biweekly publication several weeks in advance of the Olympics. In addition, a booklet will be published detailing information about the different venues. Distribution will be the same as for the biweekly publication. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual, ''Preflight'' Section.

Other U.S. Laws and Regulations

Aircraft operators should clearly understand that the SFAR is in addition to other laws and regulations of the U.S. The SFAR will not waive or supersede any U.S. law or obligation. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform with all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations established by the:

1. U.S. Civil Aeronautics Board regarding flights entering the U.S.;
2. U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;
3. U.S. FAA regarding flight in or into U.S. airspace. This includes compliance with Federal Aviation Regulations regarding operations into or within the U.S. through air defense identification zones, and compliance with general flight rules; and
4. Airport management authorities regarding use of airports and airport facilities.

Environmental Effects

This rule establishes TFR areas for safety and security purposes and will curtail or limit certain aircraft operations within designated areas at defined dates and times, rather than require aircraft to be operated along specified routings or in accordance with specific procedures. Additionally, this regulation will be temporary in nature and effective only for the dates and times necessary to provide for the safety and protection of participants and spectators on the ground, as well as law enforcement and security personnel operating in the air at Olympic game venues. ATC will retain the ability to direct aircraft through the restricted areas in accordance with normal traffic flows. The FAA believes, therefore, that the establishment of temporary flight restriction areas will have minimal impact on ATC routings or procedures.

Further, this action will result in a reduction in aircraft activity in the vicinity of the Olympic games by restricting aircraft operations. Therefore, there will be fewer aircraft operations in the vicinity of the Olympic games than will have occurred if the restricted areas were not in place and noise levels associated with that greater aircraft activity will also be reduced. Additionally, aircraft avoiding the restricted areas will not be routed over any specific area. This rule will, therefore, not result in any long-term action which will routinely route aircraft over noise-sensitive areas. For the reasons stated above, the FAA concludes that this rule will not significantly affect the quality of the human environment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization Standards and Recommended Practices (SARP) to the maximum extent practicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the small amount of paper burden associated with the rule will be submitted to the Office of Management and Budget for review.

Regulatory Evaluation

This regulatory evaluation examines the costs and benefits of the SFAR applicable for the period July 19 through August 4, 1996, the SFAR establishes TFR's overlying the various competition venues for the 1996 Olympic games. This rule requires slot reservations for arrivals and departures at specified airports in the vicinity of the Olympics. Since the impacts of the changes are relatively minor this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Costs and Benefits

There are two major areas where economic impacts are likely: Slot Reservation System and Temporary Flight Restrictions.

A. Slot Reservation System

During the Olympic period, the FAA must assure the continued safe and efficient use of airspace over the affected areas. To achieve this objective while minimizing disruption to the air traveling public, the FAA will establish an arrival and departure slot reservation system to manage air traffic into and out of airports serving the Olympic Games.

As a result of the slot reservation system some flights may be canceled and others rerouted. The cost of the cancellations will be the value of the flights to airlines and passengers less aircraft operating cost to conduct the flights. Other flights may be diverted to other airports in the Olympic Games area. Diversions will result in additional costs of trips to and from places of intended lodging and possible extra aircraft operation costs. The major economic impact in the case of a diversion will be an inconvenience to operators who may have wanted to land at a given airport. Because such occurrences are of limited duration, the FAA believes that costs associated with any diversions from one airport to another in the affected area will probably be minimal. The additional FAA administrative workload generated by the rule will be absorbed by current personnel and equipment resources. The slot provision will not require any additional air traffic controllers nor additional radar control equipment.

The benefits of the slot reservation system will be better control of the airspace over Atlanta and other areas affected by the Olympics. Arrivals are expected to increase 25 percent during the 3 weeks of the Olympic season. There will be an increased risk of accidents due to this unprecedented congestion in the Atlanta area if greater controls are not implemented. There is also the potential benefit of reduced delay times for operators attempting to land in the Atlanta area. The slot provision will assure that the FAA will have sufficient capacity to handle the many possible extra flights carrying spectators, athletes, media personnel, and dignitaries during the Olympic period without unnecessary delay.

B. Temporary Flight Restriction Areas

Due to the substantial increase in aircraft operations that are expected in the Atlanta area as well as other sites, the FAA will establish TFR areas over the Olympic village and competition sites. The establishment of TFR's over competition venues will result in the restriction of aircraft operations from the surface to 2500 feet.

The major economic impact of circumnavigation in this case will be an inconvenience to operators who may have wanted to operate within the area of the TFR. Because such occurrences are of limited duration and the restricted areas are limited in size, the FAA believes that any circumnavigation cots will be negligible. An aircraft operator could avoid the restricted airspace by flying over it without significantly deviating from their current routes or by circumnavigating the restricted airspace.

The benefits of the TFR airspace primarily will be enhanced safety to the public. Enhanced safety will take the form of the reduced possibility of fatalities and property damage as a result of a lowered risk of accidents due to increased positive control of TFR airspace. While benefits cannot be quantified, the FAA believes the benefits are commensurate with the small costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have a significant economic impact on a substantial number of small entities.

The FAA's criteria for a ''substantial number'' is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. The small entities that could be potentially affected by the implementation of the proposed rule are operators of aircraft for hire owning nine or fewer aircraft. Because of the negligible impact of this regulatory action, the FAA initially determines that this proposed amendment would not have a significant impact on a substantial number of small entities.

Federalism Implications

The regulation set forth 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 regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Trade Impact Assessment

This rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States. This rule will not impose additional temporary costs to aircraft operators. There should be no effect on U.S. or foreign aircraft manufacturers. Therefore, the FAA has determined that the rule will neither have an effect on the sale of foreign aviation products nor services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. The FAA has determined that the rule will impose temporary additional costs to the public. The magnitude of these costs, while undetermined, are negligible. The benefits will be increased aviation safety resulting from a lower risk of accidents due to increased congestion during the Olympics. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A Regulatory Flexibility Determination and International Impact Assessment are set out above. Because the economic impact of this rule is likely to be minimal, no formal regulatory evaluation has been prepared.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Special Federal Aviation Regulation (SFAR)

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 91 as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. By adding Special Federal Aviation Regulation No. 74 to read as follows:

SFAR No. 74 Airspace and Flight Operations Requirements for the 1996 Summer Olympic Games, Atlanta, Georgia

A. General

1. Each person shall be familiar with all NOTAMs issued pursuant to this SFAR and all other available information concerning that operation before conducting any operation into or out of an airport or area specified in this SFAR or in NOTAMs pursuant to this SFAR. In addition, each person operating an international flight that will enter the U.S. shall be familiar with any international NOTAMs issued pursuant to this SFAR. NOTAMs are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

2. Notwithstanding any provision of the Federal Aviation Regulations to the contrary, no person may operate an aircraft contrary to any restriction procedure specified in this SFAR or by the Administrator, through a NOTAM issued pursuant to this SFAR.

3. As conditions warrant, the Administrator is authorized to—

(a) Restrict, prohibit, or permit IFR/VFR operations at any airport, terminal, or enroute airspace area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(b) Give priority to or exclude the following flights from certain provisions of this SFAR and NOTAMs issued pursuant to this SFAR: (The requirement to contact the designated using agency for authorization to enter a TFR is mandatory.)

(1) Essential military.

(2) Medical and rescue.

(3) Essential public health and welfare.

(4) Presidential and Vice Presidential.

(5) Flights carrying visiting heads of state.

(6) Flights in the service of the Olympic Committee and media flights whose planned activities have been coordinated and accredited by the Atlanta Committee for the Olympic Games.

(7) Law enforcement and security.

(8) Flights authorized by the Director, Air Traffic Service; and/or

(c) Implement flow control management procedures.

4. For security purposes, the Administrator may issue NOTAMs during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAMs issued pursuant to this SFAR if such action is

consistent with the safe and efficient use of airspace and the safety and security of persons and property on the ground as affected by air traffic.

5. No person may operate an aircraft to or from an airport listed in this SFAR or NOTAM issued pursuant to this SFAR unless that person complies with the requirements of this SFAR and NOTAMs issued pursuant to this SFAR that are applicable to his/her operations.

B. Slot Reservation System

1. General Description

Slot reservations for arrivals and departures at specified airports in the vicinity of the Olympic Games are required for the period July 17 through August 6, 1996. The FAA believes this action is necessary for the security of the venues, safe operation and management of aircraft operating to, within, and from these areas, and to prevent any unsafe congestion of sightseeing and other aircraft over the various venues.

2. Definitions

For purposes of this SFAR the following definitions apply:

(a) Domestic air transportation (domestic)—the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft, in commerce originating in the United States and commencing any place within the United States.

(b) Foreign air transportation (foreign)—the carriage by aircraft of persons or property as a common carrier for compensation or hire, or carriage of mail by aircraft, in commerce between a place in the United States and any place outside of the United States.

(c) Scheduled operations—foreign and domestic air carrier and cargo operations published in the Official Air Line Guide (OAG) as of June 30, 1996, and/or routine consistent operations operated same time, day and number of days per week as in regularly scheduled cargo operations. This category also includes additional operations by scheduled operators at the same airport if those operations are listed in the OAG as of June 30, 1996.

(d) Non-scheduled operations—foreign and domestic charters and cargo operations not published in the OAG as of June 30, 1996, and/or not operated on a routine consistent basis during the same time, day and number of days per week, excluding helicopters. This category also includes additional operations by scheduled operators at the same airport that are not listed in the OAG as of June 30, 1996.

(e) Other operations—all operations conducted by operators that do not hold either an air carrier certificate or an operating certificate for common carriage issued under SFAR 38–2 or part 119 of the Federal Aviation Regulations or any operations conducted under part 129 of the Federal Aviation Regulations. These operations exclude helicopters and include, but are not limited to, general aviation and business operations conducted under part 91.

3. Method

Beginning May 15 through June 30, 1996, non-scheduled operations may submit their request for slot reservations for the affected airports via Internet address [atcslots@mail.hq.faa.gov] or facsimile number [(770) 946–7938]. Request confirmation will be provided within 72 hours of receipt via the form of request. From the period July 1 through July 13, 1996, the FAA will not receive any requests.

Beginning July 14, 1996, 7:00 a.m. (EDT), all operators can reserve VFR arrival and departure or IFR arrival and departure slots at these airports by calling 1–800–96FAA96 (963–2296), 24 hours a day. Reservation slots may be reserved no sooner than 72 hours before your estimated time of arrival or departure.

4. Necessary Information

The following information must be provided for all requests (reservation requests beginning May 15 through June 30, 1996, via Internet address or facsimile number, and via the telephone number as of July 14, 1996): Arrival Reservations: destination airport, estimated time of arrival, call sign, direction of arrival to the Atlanta area and type aircraft; Departure Reservations: departure airport, estimated time of departure, call sign, destination airport, first fix after departure and type aircraft; Confirmation Method: operator's Internet address or facsimile number for return confirmation for arrival and departure reservations.

5. Affected Airports

For purposes of the SFAR:

(a) Airports and airspace areas associated with Olympic activity which require restriction or prohibition of aviation activity will be designated in NOTAMs issues pursuant to this SFAR.

(b) Airports listed below and in NOTAMs issued pursuant to this SFAR are identified as:

VFR Arrival Slot Reservation Airports

Cobb County-McCollum Field Airport (RYY), Marietta, GA
DeKalb-Peachtree Airport (PDK), Atlanta, GA
Fulton County Airport-Brown Field Airport (FTY), Atlanta, GA
Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA

VFR Departure Slot Reservation Airports

Cobb County-McCollum Field Airport (RYY), Marietta, GA
DeKalb-Peachtree Airport (PDK), Atlanta, GA
Fulton County Airport-Brown Field Airport (FTY), Atlanta, GA
Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA

Non-Scheduled IFR Slot Reservation Airports

Clayton County-Tara Field Airport (4A7), Hampton, GA
Cobb County-McCollum Field Airport (RYY), Marietta, GA
Covington Municipal Airport (9A1), Covington, GA
DeKalb-Peachtree Airport (PDK), Atlanta, GA
Ben Epps Field Airport (AHN), Athens, GA
Peachtree City-Falcon Field Airport (FFC), Peachtree City, GA
Fulton County Airport-Brown Field Airport (FTY), Atlanta, GA
Lee Gilmer Memorial Airport (GVL), Gainesville, GA
Gwinnett County-Briscoe Field Airport (LZU), Lawrenceville, GA
The William B. Hartsfield Atlanta International Airport (ATL), Atlanta, GA
Richard B. Russell Airport (RMG), Rome, GA

C. Temporary Flight Restriction (TFR) Areas

The FAA establishes TFR areas over the Olympic Village and competition sites. The establishment of TFR areas over the competition venues will result in the restriction of aircraft operations in these areas; however, access to these areas may be accommodated with an appropriate authorization from the designated using agency. Aircraft operating under exclusions approved by the Administrator are required to contact the designated using agency for appropriate authority to enter a TFR. ATC will retain the ability to manage aircraft through the TFR areas in accordance with normal traffic flow.

Operating restrictions within the airspace overlying competition venues are for the period from 3 hours before to 3 hours after each event. The additional time that the restrictions are to be imposed, before and after each event, will accommodate the observation and planning of ground traffic movement as well as facilitate the orderly movement of aircraft in and through the airspace above each event. Flight operations will be restricted within the airspace from the surface to approximately 2500 feet AGL to provide a safe environment.

At the following locations, flight is restricted during the times of designation:

1. The Olympic Village; Atlanta, Georgia

That airspace within a 1 NM radius of latitude (lat.) 33° 46′ 35″ N, longitude (long.) 84° 23′ 52″ W (ATL 012R/8.5 NM distance measuring equipment (DME) fix).

Designated altitudes: Surface to but not including 3,500 feet mean sea level (MSL).

Times of Designation: July 6, 1996, to August 11, 1996, 24 hours per day.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith (770) 919–9929

2. The Olympic Ring; Atlanta, Georgia

That airspace within a 3 NM radius of lat. 33° 45′ 27″ N, long. 84° 24′ 05″ W (ATL 013R/7.4 NM DME fix).

Designated altitudes. Surface to but not including 3,500 feet MSL.

Times of Designation. July 19, 1996, from 7:00 p.m. local time to July 20, 1996 at 2:00 a.m.; July 20, 1996 until August 5, 1996, 5:00 a.m. until 2:00 a.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith (770) 919–9929.

3. Wolf Creek Skeet Range; Atlanta, Georgia

That airspace within a 1 NM radius of lat. 33° 40′ 12″ N long. 84° 33′ 54″ W, (ATL 286R/6 NM DME fix).

Designated altitudes: Surface to but not including 2,500 feet MSL.

Times of Designation:

July 20, 1996, from 8:00 a.m. until 8:00 p.m.
July 21, 1996, from 8:00 a.m. until 8:00 p.m.
July 22, 1996, from 8:00 a.m. until 4:30 p.m.

July 23, 1996, from 8:00 a.m. until 7:00 p.m.
July 24, 1996, from 8:00 a.m. until 5:30 p.m.
July 25, 1996, from 8:00 a.m. until 8:30 p.m.
July 26, 1996, from 8:00 a.m. until 7:00 p.m.
July 27, 1996, from 12:00 a.m. until 7:00 p.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith (770) 919–9929.

4. Stone Mountain Park, Stone Mountain, Georgia

That airspace within a 3 NM radius of lat. 33° 48′ 24″ N, long. 84° 08′ 06″ W (PDK 117R/9 NM DME fix).

Designated altitudes. Surface to and including 2,500 feet AGL.

Times of Designation:

July 22, 1996, from 9:00 a.m. until 9:00 p.m.
July 23, 1996, from 9:00 a.m. until 9:00 p.m.
July 24, 1996, from 9:00 a.m. until 9:00 p.m.
July 25, 1996, from 9:00 a.m. until 9:00 p.m.
July 26, 1996, from 9:00 a.m. until 9:00 p.m.
July 27, 1996, from 8:00 a.m. until 9:00 p.m.
July 28, 1996, from 8:00 a.m. until 9:00 p.m.
July 29, 1996, from 8:00 a.m. until 11:00 p.m.
July 30, 1996, from 8:00 a.m. until 11:00 p.m.
July 31, 1996, from 9:00 a.m. until 7:00 p.m.
August 1, 1996, from 9:00 a.m. until 8:00 p.m.
August 2, 1996, from 9:00 a.m. until 9:00 p.m.
August 3, 1996, from 9:00 a.m. until 12:00 a.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith, (770) 919–9929.

5. Atlanta Beach; Jonesboro, Georgia

That airspace within a 1 NM radius of lat. 33°31′23″ N, long. 84°18′39″ W (ATL 137R/9 NM DME fix).

Designated altitudes. Surface to but not including 3,500 feet MSL.

Times of Designation:

July 23, 1996, from 6:00 a.m. until 9:00 p.m.
July 24, 1996, from 6:00 a.m. until 9:00 p.m.
July 25, 1996, from 6:00 a.m. until 9:00 p.m.
July 26, 1996, from 6:00 a.m. until 9:00 p.m.
July 27, 1996, from 6:00 a.m. until 9:00 p.m.
July 28, 1996, from 8:00 a.m. until 9:00 p.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith, (770) 919–9929.

6. International Horsepark; Covington, Georgia

That airspace within a 3 NM radius of lat. 33°40′28″ N, long. 83°56′58″ W (ATL 084R/24 NM. DME fix) excluding that airspace along and south of Interstate 20.

Designated altitudes. Surface to and including 2,500 feet AGL.

Times of Designation:

July 21, 1996, from 9:00 a.m. until 6:00 p.m.
July 22, 1996, from 9:00 a.m. until 6:00 p.m.
July 23, 1996, from 9:00 a.m. until 5:00 p.m.
July 24, 1996, from 8:30 a.m. until 11:00 p.m.
July 25, 1996, from 9:00 a.m. until 4:00 p.m.
July 26, 1996, from 9:00 a.m. until 1:00 p.m.
July 27, 1996, from 8:00 a.m. until 6:00 p.m.
July 28, 1996, from 9:00 a.m. until 6:00 p.m.
July 29, 1996, from 9:00 a.m. until 6:00 p.m.
July 30, 1996, from 8:00 a.m. until 9:30 p.m.
July 31, 1996, from 9:00 a.m. until 5:00 p.m.
August 1, 1996, from 8:00 a.m. until 7:30 p.m.
August 4, 1996, from 9:00 a.m. until 4:00 p.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith, (770) 919–9929.

7. Lake Sidney Lanier; Gainesville, Georgia

That airspace within a 2 NM radius of lat. 34°21′00″ N, long. 83°47′11″ W (PDK 042R/38 NM DME fix).

Designated altitudes. Surface to and including 2,500 feet AGL.

Times of Designation:

July 21, 1996, from 8:00 a.m. until 2:00 p.m.
July 22, 1996, from 8:00 a.m. until 1:30 p.m.
July 23, 1996, from 8:00 a.m. until 1:00 p.m.
July 24, 1996, from 8:00 a.m. until 11:30 a.m.
July 25, 1996, from 8:00 a.m. until 12:30 p.m.
July 26, 1996, from 8:00 a.m. until 12:30 p.m.
July 27, 1996, from 7:30 a.m. until 1:30 p.m.
July 28, 1996, from 7:30 a.m. until 1:30 p.m.

Using agency: Georgia State Patrol.
Contact: SFC W.S. Smith, (770) 919–9929.

8. Sanford Stadium; Athens, Georgia

That airspace with a 1 NM radius of lat. 33°56′59″ N, long. 83°22′24″ W (AHN 258R/2 NM DME fix).

Designated altitudes: Surface to and including 2,500 feet AGL.

Times of Designation:

July 31, 1996, from 2:00 p.m. until 7:00 p.m.
August 1, 1996, from 9:00 a.m. until 7:00 p.m.
August 2, 1996, from 9:00 a.m. until 6:00 p.m.
August 3, 1996 from 12:00 p.m. until 6:00 p.m.

Using agency: Georgia State Patrol
Contact: SFC W.S. Smith (770) 919–9929.

9. Golden Park; Columbus, Georgia

That airspace within a 1 NM radius of lat. 32°27′09″ N, long. 84°59′30″ W (CSG 172R/10 NM DME fix).

Designated altitudes: Surface to and including 2,500 feet AGL.

Times of Designation:

July 21, 1996, through July 27, 1996, 8:00 a.m. until 11:30 p.m.;
July 29, 1996, from 5:30 p.m. until 11:30 p.m.
July 30, 1996, from 3:30 p.m. until 11:00 p.m.

Using agency: Georgia State Patrol
Contact: SFC W.S. Smith (770) 919–9929.

10. Olympic Village; Columbus, Georgia.

That airspace within a 1 NM radius of lat. 32°21′44″ N, long. 84°58′15″ W (CSG 171R/16 NM DME fix).

Designated altitudes. Surface to and including 2,000 feet AGL.

Times of Designation: July 5, 1996, through August 8, 1996, when Ft. Benning Class D airspace is not effective.

Using agency: Georgia State Patrol
Contact: SFC W.S. Smith (770) 919–9929.

11. Lee College; Cleveland, Tennessee

That airspace within a 0.5 NM radius of lat. 35°09′58″ N, long. 84°52′13″ W (CHA 049R/18 NM DME fix).

Designated altitudes: Surface to and including 2,500 feet AGL.

Times of Designation: July 6, 1996, from 6:00 a.m. until July 30, 1996, at 12:00 a.m.

Using agency: Ocoee River Venue Law Enforcement Committee (ORVLEC)

Contact: William J. Ferris III (423) 265–3601.

12. U.S. Highway 64; Tennessee

0.5 NM on either side of U.S. Highway 64 from Cleveland, Lee College, TN., latitude 35°09′58″ N, longitude 84°52′13″ W, thence following U.S. Highway 64 to latitude 35°04′02″ N, longitude 84°28′37″ W.

Designated altitudes. Surface to and including 2,500 feet AGL.

Times of Designation: July 26, 1996, through July 28, 1996, from dawn until dusk.

Using agency: ORVLEC
Contact: William J. Ferris III (423) 265–3601.

13. Ocoee River; Tennessee

That airspace within a 2 NM radius of lat. 35°04′02″ N, long. 84°27′37″ W (CHA 080R/34 NM DME fix).

Designated altitudes. Surface to and including 2,500 feet AGL.

Times of Designation: July 26, 1996, through July 28, 1996, from dawn until dusk.

Using agency: ORVLEC
Contact: William J. Ferris III (423) 265–3601.

14. Legion Field; Birmingham, Alabama

That airspace within a 1 NM radius of lat. 33°30′42″ N, long. 86°50′34″ W (VUZ 160R/10 NM DME fix).

Designated altitudes: Surface to 2,000 feet AGL.

Times of designation:

July 20, 1996, from 3:30 p.m. until 11:00 p.m.,
July 21, 1996, from 10:30 a.m. until 8:30 p.m.,
July 22, 1996, from 3:30 p.m. until 11:00 p.m.,
July 23, 1996, from 1:30 p.m. until 11:30 p.m.,
July 24, 1996, from 3:30 p.m. until 11:00 p.m.,
July 25, 1996, from 2:30 p.m. until 12:30 a.m. July 26, 1996,
July 27, 1996, from 3:30 p.m. until 11:00 p.m.,
July 28, 1996, from 12:00 p.m. until 7:30 p.m.

Using agency: Federal Bureau of Investigation
Contact: Jim Brant (205) 252–7705.

15. The Olympic Village; Savannah, Georgia

That airspace within a 1 NM radius of lat. 32°04′45″ N, long. 81°04′50″ W (SAV 158R/6 NM DME fix).

Designated altitudes. Surface to and including 2,000 feet AGL.

Times of Designation: July 6, 1996, until August 7, 1996, 24 hours a day.

Using agency: Georgia State Patrol
Contact: SFC W.S. Smith (770) 919–9929.

16. Sail Harbor and Wilmington River Transit Zone; Savannah, Georgia

That airspace within a 1 NM radius of lat. 32°00′20″ N, long. 81°00′00″ W (SAV 147R/11 NM DME fix). Airspace within a 1 NM radius of the Sheraton Hotel, and airspace over the Wilmington River from this point south to Wassaw Sound.

Designated altitudes. Surface to and including 2,000 feet AGL.

Times of Designation: July 12, 1996, until August 4, 1996, during daylight hours.

Using agency: Georgia State Patrol

Contact: SFC W.S. Smith (770) 919–9929.

17. Sailing Venue; Savannah, Georgia

That airspace within a 4 NM radius of lat. 31°55′00″ N, long. 80°53′00″ W (SAV 141R/19 NM DME fix).

Designated altitudes. Surface to and including 2,000 feet AGL.

Times of Designation: July 22, 1996, until August 1, 1996, during daylight hours.

Using agency. Georgia State Patrol

Contact: SFC W.S. Smith (770) 919–9929.

18. The Citrus Bowl; Orlando, Florida

That airspace within a 1 NM radius of lat. 28°32′20″ N, long. 81°24′10″ W (ORL 260R/4 NM DME fix).

Designated altitudes: Surface to but not including 1,600 feet MSL.

Times of Designation:

July 20, 1996, from 2:00 p.m. until 8:00 p.m.,
July 21, 1996, from 2:00 p.m. until 10:30 p.m.,
July 22, 1996, from 5:00 p.m. until 11:00 p.m.,
July 23, 1996, from 5:00 p.m. until 1:30 p.m.,
July 24, 1996, from 5:00 p.m. until 11:00 p.m.,
July 25, 1996, from 5:00 p.m. until 1:30 a.m.

Using agency: Orange County Sheriff Office.

Contact: Cmdr. Richard Silverman (407) 836–3820.

19. Olympic Village; Davie, Florida.

That airspace within a 1 NM radius of lat. 26°04′29″ N, long. 80°14′31″ W (FLL 270R/05 NM DME fix).

Designated altitudes. Surface to and including 2,000 feet MSL.

Times of Designation: July 6, 1996, until July 31, 1996, 24 hours a day.

Using Agency. Davie Police Department

Contact: Lt. Steve Seefchak (305) 797–1224.

20. The Orange Bowl; Miami, Florida

That airspace within a 1 NM radius of lat. 25°46′40″ N, long. 80°13′12″ W (DHP 100R/7 NM DME fix).

Designated altitudes. Surface to and including 2,500 feet MSL.

Times of Designation:

July 20, 1996, from 12:00 p.m. until 11:00 p.m.,
July 21, 1996, from 1:00 p.m. until 11:00 p.m.,
July 22, 1996, from 4:00 p.m. until 12:00 a.m.,
July 23, 1996, from 3:00 p.m. until 1:00 a.m.,
July 24, 1996, from 4:00 p.m. until 12:00 a.m.,
July 25, 1996, from 3:00 p.m. until 2:00 a.m.,
July 27, 1996, from 3:00 p.m. until 11:00 p.m.,
July 28, 1996, from 3:00 p.m. until 11:00 p.m.

Using agency. Miami Police Department.

Contact: Capt. Paul Shepard (305) 579–6181.

21. RFK Stadium; Washington, DC

That airspace within a 1 NM radius of lat. 38°53′23″ N, long. 76°58′19″ W (DCA 067R/3.5 NM DME fix).

Designated altitudes. Surface to and including 2,500 feel AGL.

Times of Designation:

July 20, 1996, from 11:30 p.m. until 5:30 p.m.,
July 21, 1996, from 11:30 p.m. until 8:00 p.m.,
July 22, 1996, from 5:00 p.m. until 11:00 p.m.,
July 23, 1996, from 5:00 p.m. until 1:30 a.m.,
July 24, 1996, from 5:00 p.m. until 11:00 p.m.,
July 25, 1996, from 5:00 p.m. until 1:30 a.m.

Using agency: Special Operations Division of the Washington, DC, Metropolitan Police.

Contact: Don Pope (202) 727–4582 or Aviation Division (301) 248–7585.

D. Expiration Date

This SFAR expires on August 12, 1996.

Issued in Washington, DC on February 6, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–2988 Filed 2–7–96; 2:57 pm]

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2924/P.L. 104–103

To guarantee the timely payment of social security benefits in March 1996. (Feb. 8, 1996; 110 Stat. 55)

S. 652/P.L. 104–104

Telecommunications Act of 1996 (Feb. 8, 1996; 110 Stat. 56)

Last List February 8, 1996

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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Title	Stock Number	Price	Revision Date
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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